Supreme Court of the United States.

OCTOBER TERM, 1901.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error, vs. DAVID W. EBAUGH, Defendant in Error.	Term No. 177. In Error to the Supreme Court of the State of South Carolina.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

Statement of the Case.

The record in this case presents a controversy between a corporation of New York and one of its stockholders resident in South Carolina as to the *status* of the stockholder and the relative rights, duties and obligations of the corporation and its stockholders as incident to and arising out of their contracts of membership. No contract entered into or to be performed in South Carolina is in controversy. The only contest is over the contract of membership entered into in the State of New York, performable in that State, and of which the laws of New York and the corporate articles and by-laws are necessarily constituent parts. The sole issue is

between the defendant in error, Ebaugh, and the plaintiff in error, Eastern Building and Loan Association, upon the question whether the defendant in error (plaintiff below) is entitled to withdraw his contributions as a stockholder to the capital stock of the corporation, and, in addition to such contributions, to recover a considerable sum representing the difference between the amount paid in on the member's stock and its par value. The record shows by the undisputed evidence, as we shall see later, that the stock of the defendant in error has not attained its maturity or par value, and that plaintiff in error is not liable, under the statutes and judicial decisions of New York, and the express terms of the articles of association and by-laws of the corporation, to pay to defendant in error the par value of his stock. He, however, insists that he is entitled to recover the full par value of his stock, notwithstanding the fact that the Eastern Building and Loan Association is a purely mutual corporation of which he is a member, having like obligations with all other members, and notwithstanding the undisputed fact that the assets of the corporation are not sufficient to enable it to pay to members the full par value of their stock at the expiration of 78 months from the date of membership, as originally contemplated and estimated. There can be no successful or even plausible contention that under the laws of New York and the corporate articles and by-laws, defendant in error is entitled to recover the par value of his stock. At most he can only recover the amount actually contributed by him to the capital stock of the corporation, plus his proportionate share of the corporate profits, if any. Even this right, under the laws of New York, is an *inchoate* one, only to be exercised upon certain terms and conditions set forth in the statutes of New York and in the corporate articles and by-laws (Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281).

The Supreme Court of South Carolina having in the case of *Welling and Bonnoitt* v. *Eastern Build-*

ing and Loan Association, 56 S. C., 280, 296, 297, declared that South Carolina is "not compelled from mere comity to recognize the laws of New York," and that "whatever may be the laws of New York we do not think they should be enforced in this State," follows the same doctrine in the case at bar, and holds as between a stockholder of the Eastern Building and Loan Association resident in South Carolina and the New York corporation, that the laws of New York are not to be applied as a part of the contract of corporate membership even though they are fully proven as facts in the case, but that full faith and credit may be denied to such laws, and the obligations of the corporation to its members be determined without reference to the laws of the corporate *situs*.

We meet this decision by invoking those provisions of the Constitution of the United States which declare that "full faith and credit *shall* be given in each State to the *public acts*, records and judicial proceedings of every other State" (Const., Art. IV., § 1); that no State shall "pass * * * any law impairing the obligation of contracts" (Const., Art. I., § 10), and that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction *the equal protection of the laws*" (Const., XIVth Amendment, § 1).

The defendant in error at the last term made a motion to "dismiss or affirm." That motion, by order of the Court, was continued until the hearing upon the merits. In support of the motion, counsel for defendant in error submitted an "abstract of the case" or a "history of this case" which we cannot accept as either fair or accurate in its presentation of the matters in controversy. We therefore make the following detailed statement of the facts as we find them in the record.

Facts Shown by the Record.

I.—Plaintiff in error (defendant below) is a corporation organized under the laws of the State of New York, with its principal place of business in Syracuse, New York.

Transcript, p. 2.

II.—It was incorporated under Chapter 122 of the Laws of New York of 1851, as amended by Chapter 564 of the Laws of New York of 1875, and both of these laws were given in evidence, and appear in the record in this case.

Transcript, pp. 31–38.

III.—The corporate charter or articles of incorporation were given in evidence, and appear in the record.

Transcript, pp. 47–53.

IV.—The by-laws of the corporation were also given in evidence, and appear in the record.

Transcript, pp. 54–62.

V.—The case of *O'Malley* v. *People's Building & Loan Association*, reported in 92 Hun (N. Y.), 572, was also formally given in evidence in behalf of the corporation.

Transcript, pp. 38–41.

VI.—D. A. Pierce, a witness called in behalf of the corporation, qualified himself as an expert to testify to the laws of the State of New York, showed his special familarity with the laws of that State applicable to building and loan associations, specifically testified that the Laws of 1851 and 1875, aforesaid, were the governing acts under which plaintiff in error was incorporated, and then testifies that "under the statute under which defendant corporation is incorporated and the defendant's articles of incorporation and by-laws and the decisions of

the courts of the State of New York, the defendant is not bound to mature its stock within the time specified, if any, on the face of the certificates, say 78 months, or any other fixed period, regardless of the actual value of said stock at the expiration of said fixed period, said value depending, of course, upon the payment of dues made thereon and their *pro rata* share of the earnings; that any period of maturity fixed or indicated in the certificates of stock in any way is simply an estimated period, and that the association is not required to pay the face value thereof at the expiration of any such period, unless the amount paid in thereon together with the earnings apportioned thereto shall equal the par value of the shares."

Transcript, pp. 41, 42.

VII.—It was also agreed upon the trial "that the New York Reports can be referred to and the decisions shall be considered parts of the case."

Transcript, p. 16.

VIII.—Under this stipulation, counsel for the corporation gave in evidence the cases of *Englehardt* v. *Fifth Ward Dime Savings Assn.*, reported 148 N. Y., 281; *People* v. *Lowe*, reported 117 N. Y., 175; *Concordia Savings, &c., Assn.* v. *Read*, reported 93 N. Y., 474; and thereupon defendant in error (plaintiff below) introduced under said agreement of counsel the cases of *Whitney* v. *Barlow*, reported 63 N. Y., 62; *DeGraff* v. *American Linen Thread Co.*, reported 21 N. Y., 124; and *Diamond Match Co.* v. *Roeber*, reported 106 N. Y., 473.

IX.—Upon the trial "the Referee was requested by defendant's attorney to give full faith and credit to the laws of New York under Article IV., § 1 of the United States Constitution and under § 905 of the Revised Statutes of the United States."

Transcript, p. 16.

X.—The case was heard in the trial Court before a referee. The report of the Referee was against the corporation (Transcript, pp. 24–28) and the Referee in his findings expressly refused to be bound by and give effect to the statutes and judicial decisions of the State of New York, in accordance with the terms of those statutes and the meaning and effect of those decisions in the State of New York.

Transcript, pp. 26, 27, 28.

The report of the Referee was excepted to by counsel for the corporation upon numerous grounds, among others, "That the Referee erred in not giving full faith and credit to the laws of New York, under Article IV., § 1 of the Constitution of the United States and under § 905 of the Revised Statutes of the United States."

Transcript, pp. 29, 30, Finding XII.

The report of the Referee was confirmed and judgment rendered thereon in the Court of Common Pleas for the County of Greenville, the exceptions to the Referee's report being overruled and judgment rendered against the plaintiff in error, the Judge of that Court holding that the decisions of the Supreme Court of South Carolina in the cases of *Williamson* v. *Eastern Building and Loan Association* and *Welling and Bennoitt* v. *Eastern Building and Loan Association*, previously decided by the Supreme Court of South Carolina, were controlling upon the questions involved.

Transcript, pp. 62–65.

XII.—Exceptions to the decision and judgment of the Court of Common Pleas were duly taken, and what seem to be several distinct "federal questions" were raised by these exceptions.

Transcript, p. 65; Exceptions, 1, 2, 3, 4, 5.

XIII.—Upon these exceptions on appeal the case was heard and determined in the Supreme Court of South Carolina and the judgment of the lower Court "affirmed."

Transcript, pp. 66, 68.

XIV.—In the case of *Welling and Bennoitt* v. *Eastern Building and Loan Association*, 56 S. C., 280, the Supreme Court of South Carolina, in its opinion in that case, laid down the following proposition of law: "The appellant, however, contends that the said agreement and the by-laws are to be construed under the laws of New York. * * * This is not a right of either State, but is permitted and accepted by the States for mutual interest and convenience, from a sense of the inconvenience which would otherwise result, and from a moral necessity to do justice in order that justice may be done in return. Without this rule the law of one State can have no force in another. But there is no comity among the Courts of the different States. * * * It is the duty of every State to look to the interests of its own subjects. Comity being voluntary and not obligatory, cannot supersede all discretion on the subject. * * * No State can demand the recognition of its laws in another, if they are deemed by the latter to be impolitic or unjust, of bad morals, or injurious to the rights of its citizens, or against its public policy. * * * It thus appears that the State is not compelled from mere comity to recognize the laws of New York for the reasons stated. The agreement herein is, in our opinion, injurious to the interests of our people, *and whatever may be the laws of New York, we do not think they should be enforced in this State.*"

56 S. C., 280, 296, 297.

XV.—In the case at bar, the Supreme Court of South Carolina, following the reasoning in the *Welling and Bonnoitt* case, and citing that case as a controlling precedent, affirmed the judgment of the

lower court, but, the *Welling and Bonnoitt* case having in the meantime been brought by writ of error in this court, the transcript in that case having been filed in the office of the Clerk of this Court on January 27, 1900 (Transcript of Record in case of Welling and Bonnoitt, No. 17,620, Term No. 190, p. 117), the Supreme Court of South Carolina, in its opinion in the case at bar, while following literally the doctrine laid down in the *Welling and Bonnoitt* case, yet seeks to make it appear that its opinion and decision is in conformity with the laws and decisions of the State of New York, and that it has construed the charter powers, duties and obligations of plaintiff in error and the contract of membership between plaintiff in error and defendant in error in accordance with the laws of New York. Says the Supreme Court of South Carolina in its opinion: "Both the Master and Circuit Judge find, *as matter of fact*, that the laws of New York do not forbid the defendant from entering into an agreement by which his shares of stock would mature in a definite time."

Transcript, p. 67.

It is then sought to rest the decision in this case solely upon the proposition that plaintiff in error could not escape liability to defendant in error upon the ground that it had entered into a contract or agreement "in excess of its charter powers or * * * unauthorized by law" (Transcript, pp. 67, 68), thus ignoring the fact that *this is not the question presented by the record in this case at all* and is a mere side issue imported into the case for the purpose of trying to avoid determining the membership obligations of defendant in error *as a stockholder* in plaintiff in error under and in accordance with the corporate charter and by-laws and the laws and judicial decisions of the State of New York.

Closing its opinion in this case, the Supreme Court of South Carolina says: "As the laws of New York are not in conflict with the construction which

this Court has placed upon contracts similar to that upon which the action herein is founded, we fail to discover any facts causing us to differentiate this case from those hereinbefore mentioned."

Transcript, p. 68.

XVI.—The first "federal question" presented in this case is whether defendant in error as a stockholder in plaintiff in error was entitled, in an action brought by him, as a stockholder, to recover from plaintiff in error the amount of his contributions to the capital stock of plaintiff in error, to have his rights and claims adjudicated and determined under the laws of South Carolina without regard to the articles of incorporation and by-laws, and statutes and decisions of the State of New York, or whether plaintiff in error was entitled, upon the trial of such action, to have full faith and credit accorded by the courts of South Carolina to the statutes and judicial decisions of the State of New York, *with the right to have the same effect given to the statutes of New York and the articles of incorporation and by-laws of the plaintiff in error that had been and would be given to such laws, articles of incorporation and by-laws in the State of New York by the courts of New York.* The denial of this right to plaintiff in error is manifest upon the face of the record in this case. as the following further statement will show.

XVII.—Defendant in error, as plaintiff below, brought his action upon a stock certificate of the Eastern Building and Loan Association, alleging himself to be a shareholder, and that for a period of 78 months he had made payments of dues or calls upon his stock to the association. He further alleged that under his contract of membership he was entitled, after the payment of 78 monthly installments of seventy-five cents each upon each share of the stock subscribed for by him, to have such stock redeemed by the association at its full par or ma-

turity value of $100 per share. He alleged the making of the stated number of payments and the failure of the association to pay him the par or maturity value of his stock. He did not allege that the stock had been fully paid or was matured.

Transcript, pp. 2–4.

XVIII.—Plaintiff in error (defendant below) answered, admitting that plaintiff below was a stockholder, but pleading specifically that his stock had not attained its par or maturity value, was not fully paid, and that under its articles of incorporation and by-laws and the laws of the State of New York it had no right, power or authority to make payment to the said plaintiff of the par value of his said stock or to pay to him anything more "than the sum paid in by him on said stock, plus the accumulated profits thereon less the *pro rata* share of expenses and losses of defendant corporation properly chargeable against said stock pursuant to its articles of incorporation and its by-laws, not inconsistent with said articles and said laws of the State of New York."

It was further alleged in the answer, "That any provision in the certificate of stock issued by the defendant corporation to the plaintiff that the shares of stock held by him purporting or pretending to guarantee the maturity value thereof at any fixed time or period, without regard to the earnings and profits of the defendant corporation and the equal *pro rata* distribution of profits, losses and expenses of the defendant corporation among its stockholders is a contract or attempted contract *ultra vires* of the corporation, wholly beyond its corporate powers, in contravention of its articles of incorporation, by-laws and the laws of the State of New York by which it is governed, and unenforcible against it, *but that there is any such guarantee or agreement to pay is denied, and on the contrary it is alleged that in contemplation of law the promise to pay plaintiff's stock at its calculated maturity in 78 months*

was a mere estimate and not a guaranty that it would mature in that time from its share of earnings of the defendant corporation, plus the payments required thereon from the plaintiff."

It was further alleged in the answer that "at the time of the commencement of this action said shares of stock had not matured and become worth the sum of $100 per share, and that said stock has not yet matured and become worth $100 per share from the amount paid in thereon by the plaintiff together with the full proportion of earnings of the defendant to which the same is entitled less the *pro rata* share of expenses and losses of the defendant association properly chargeable against said stock."

There were various other specific defenses interposed in the answer not necessary to mention so far as the present discussion is concerned.

Transcript, pp. 4–9, pars. 6, 7, 8, 9.

It will be seen from the foregoing that the real defense of the association upon which it relied was found in the fact that under its articles of incorporation and by-laws and the laws of the State of New York, it had no power to *guarantee* the maturity of its stock at a fixed or definite time, and also that under those laws and the decisions of the courts of New York construing such laws, the so-called guaranty of maturity was in fact only an estimate as to the time when the maturity of the stock would be attained, it being manifest from a simple arithmetical calculation that payments of seventy-five cents per share per month for a period of 78 months would not equal the par value of the stock at $100 per share, and, therefore, that if it was to attain its maturity value at the expiration of the 78 months period, it would have to be through its participation in the earnings or profits of the corporation.

Transcript, p. 42, Deposition D. A. Pierce, and p. 44, Deposition Nathan C. Visscher.

It follows that before the courts of South Carolina could adjudge that defendant in error, as plaintiff below, was entitled to recover the amount of the par value of his stock certificates from the association, they were compelled to hold not merely that a contract *ultra vires* of a corporation could be enforced against it under the laws of New York and of South Carolina, but, also, and this is where the first federal question specifically arises, that they would not enforce and give full faith and credit to the statutes of the State of New York under which the association was incorporated, to the decisions of the courts of New York applying those statutes and to the articles of association and by-laws of the corporation, under all of which it is the settled law of the State of New York that a stockholder in a New York building and loan association cannot recover from the association the par or maturity value of his stock until the same has actually reached its par or maturity value by payment of calls or dues thereon, together with accruing profits, and that any stipulations in the stock certificates or literature of the corporation indicating or attempting to fix an earlier or different maturity value, will be treated as mere estimates of maturity, not binding as contracts upon the corporation.

In the case at bar, the Supreme Court of South Carolina, while not in express words refusing to give full faith and credit to the laws of New York in this respect, does in fact, by its decision, refuse to do so, resting it upon the doctrine stated in the case of *Welling* v. *Association*, *supra*, namely, that "The agreement herein is in our opinion injurious to the interests of our people, and whatever may be the laws of New York, we do not think they should be enforced in this State."

56 S. C., 297.

XIX.—It appears from Chapter 122 of the Laws of New York of 1851, and from the articles of incorporation and by-laws of the corporation, that the plain-

tiff in error is a purely mutual corporation without any fixed capital, except the sums paid in by its stockholders or members, and that the rights and duties of all stockholders are equal, mutual and reciprocal.

Transcript, pp. 31-35, 47-53, 54-62.

XX.—Section 1 of Chapter 122 of the Laws of New York of 1851, after stating the objects for which corporations of the nature of plaintiff in error may be organized, specifically limits the time and the conditions upon which members shall be entitled to receive from the association the par value of their shares, namely, "when the funds of such association shall amount to a certain sum per share to be specified in the articles of association."

Transcript, p. 31.

Section 4 of the same act expressly authorizes the trustees or directors to require subscribers for stock to pay calls or dues thereon until the stock has been paid up to its par value, the clause in question reading as follows: "It shall be lawful for the trustees to call in and demand from the stockholders respectively all such sums by them subscribed at such time and in such payments or installments as the articles of association shall prescribe."

Transcript, p. 32.

The articles of incorporation of the plaintiff in error provide that "The entrance fee of new members and new shares shall be $1 per share of stock in said association. The monthly dues per share shall be seventy-five cents."

Transcript, pp. 49, 50; Articles of Incorporation, Par. IX.

Section 7 of the New York Act of 1851 reads as follows:

"Every such corporation shall terminate except for the purpose of settling its affairs, whenever all

the shares thereof shall be redeemed by advances thereon; or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association and not sooner, but no dividend of principal or of profits shall be made until such termination; nor until all the debts of the association shall have been paid or otherwise sufficiently provided for. No holder of redeemed shares shall claim to be exempt from making the monthly payment provided in the articles of association, *upon the ground that by reason of losses, or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon;* nor shall the imposition of fines for non-payment of dues or fees, or other violation of the articles of association, or of any premium for loans made to members, be deemed to be a violation of the provisions of any statute against usury."

Transcript, p. 32.

Section 11 of the Act of 1851 provides that "all shareholders of any association formed under this act shall be individually liable to the creditors of said association to an amount equal to the amount of stock held by them respectively for all debts contracted by such association."

Transcript, p. 33.

Section 2 of said Act of 1851 authorizes the corporations organized under its provisions in their articles of association to determine "the entrance fee of new members and new shares, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, and the fees to be paid on the transfer of shares, the fines or penalties for non-payment of dues or fees, and other violation of the articles of association, the manner of redemption of shares by advances made thereon, the mortgage security to be taken on such advances

and how the same may be redeemed or changed, *the manner of transfer or withdrawal of shares*, the manner of investing funds not required for advances on shares, the qualification of voters at the meetings and the mode of voting (and) *the ultimate amount to be paid to the owners of unredeemed shares.*

Transcript, p. 31.

XXI.—The articles of association and by-laws contain no provision of any kind authorizing the payment to any stockholder of the par or maturity value of his stock at the expiration of 78 months from the date of its issue or at any other fixed or definite time. Article XII. does provide that shareholders upon certain conditions may withdraw their contributions to the capital stock of the corporation in advance of the maturity of the stock, but the gist of that provision is, that "upon such withdrawal the holder will be entitled to receive thereon the amount of the monthly installments that have been paid, with such additional interest, if any, as the by-laws may provide, *except that the same shall not exceed the net earnings of said stock.* * * * In no case shall a withdrawal from the loan fund exceed the amount of the installments paid thereto, together with the estimated amount of the earnings upon the same."

Transcript, p. 51; Articles of Incorporation, Par. XII.

Paragraph XV. of the articles of incorporation fixes the par or maturity value of shares at $100 per share.

Transcript, p. 52.

XXII.—Article XI. of the by-laws provides for an expense fund, and that "ten cents per share per month from the monthly payments on stock" shall be placed in this fund and be "devoted to the payment of operating expenses."

Transcript, p. 57; By-laws, Art. XI.

The by-laws further provide that "each share of stock shall be charged with any and all amounts that may be owing from the shareholder or his assigns to the Association, whether in dues, loans, fines, interest or premiums, and all certificates of stock in said association shall, whether mentioned therein or not, be subject to a lien thereon to secure any such indebtedness and the right to deduct and withhold the amount of any such indebtedness is hereby expressly reserved to the association."

Transcript, p. 60.

And they also provide that "all shareholders shall pay, or cause to be paid, a monthly installment of seventy-five cents on each share named in their certificate *until the same shall be fully paid.*"

Transcript, p. 60.

And they also provide that "if shares are withdrawn at any time before maturity, the holders thereof will be entitled to receive the amount paid into the loan fund in monthly payments," plus certain specified percentages of profit in certain cases.

Transcript, p. 60.

XXIII.—It is undisputed that the stock of the defendant in error had not reached its par or maturity value, and that his only right to claim the par value thereof from the association arises upon the provisions in the face of the certificate itself or from the literature of the company, which he claims the corporation is bound by in its relations with him as a stockholder, notwithstanding the provisions of the laws of the State of New York and the articles of incorporation and by-laws of the plaintiff in error. In this connection we direct attention to the fact that under Chapter 564 of the Laws of New York of 1875 the trustees or directors of plaintiff in error would render themselves personally liable by paying to defendant in error the par value of his stock before the maturity thereof, it being manifest

that they could only make such payment before the stock had matured out of the funds contributed by other members of the corporation.

XXIV.—Finally, and we regard this as conclusive upon this question, said Chapter 564 of the Laws of New York of 1875 provides that "No holder of redeemed shares shall claim to be exempt from making the monthly or other stated payments provided in the articles of association upon the ground that by reason of losses or otherwise the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon."

Transcript, p. 36, Laws of New York, Chapter 564, § 7.

That defendant in error is estopped from charging the plaintiff in error with deceit or fraud in procuring his subscription for stock by representations as to the maturity of the stock in 78 months is shown by the following facts:

The association was not incorporated until February 22, 1890 (Transcript, p. 53). Hence it had never matured or paid any stock or demonstrated its earning capacity or rate of profits when Ebaugh's membership began.

He made a formal application for stock during 1892 (Transcript, p. 10) and his stock certificate was issued to him on April 1, 1892 (Transcript, pp. 10-12). He accepted such stock certificate and seems to have exercised all the rights of membership from that date up to the 17th day of January, 1899, when he instituted his action in the State court (Transcript, pp. 2-4).

It certainly must be true that if advanced or borrowing members can be required to continue making payments of dues upon their stock until the same actually reaches its par or maturity value,

even though the estimated period of maturity is exceeded, that non-borrowing or mere investing members cannot be permitted to withdraw the par value of their stock in excess of the amount paid in by them thereon at the expiration of the estimated period, and that such is the law of New York is settled by numerous decisions in that State and elsewhere.

Upon the foregoing state of facts, we submit that the following federal questions are raised in this case:

FIRST.—The Supreme Court of South Carolina has, by its decision, denied full faith and credit to the public acts and judicial proceedings of the State of New York.

SECOND.—It has, by its decision, denied to the plaintiff in error the equal protection of the laws of South Carolina in violation of the provisions of the XIVth Amendment to the Constitution of the United States.

THIRD.—It has, by its decision, deprived plaintiff in error of the fruits and benefits of its contract with the plaintiff in error, and denied to plaintiff in error that liberty of contract guaranteed by the Constitution of the United States and the XIVth Amendment thereto.

FOURTH.—It has, by its decision, invalidated, under the guise of construction, a contract that is in its nature a matter of inter-state commerce, and has thereby assumed jurisdiction over a question of commerce between the States in contravention of the provisions of the Constitution of the United States.

FIFTH.—It has, by its decision, changed and altered the settled rule of law established by prior decisions of the Supreme Court of South Carolina which were

the law of that State at the time the contract between the plaintiff in error and defendant in error was entered into, and thereby impaired the obligation of contracts in violation of the Constitution of the United States.

SIXTH.—It has, by its decision, deprived the plaintiff in error of its property without due process of law, in violation of the Constitution of the United States.

Upon these several federal questions, we insist that this Court has jurisdiction to review the judgment of the Supreme Court of South Carolina in this case, and, without repeating them here, we direct attention to the several assignments of error heretofore made in behalf of the plaintiff in error appearing in the record of this case.

Transcript, pp. 74–76.

This brings us to a discussion of the law of this case, first, upon the federal questions involved, and, second, upon the merits of the controversy between the parties as to the reciprocal rights, duties and obligations of the plaintiff in error as a corporation of New York, and the defendant in error, as a member of and stockholder therein. We therefore respectfully submit the following brief:

BRIEF.

I.

THE CONSTITUTION SUBSTITUTES FOR A MERE RULE OF COMITY A RULE OF CONSTITUTIONAL OBLIGATION BY PROVIDING THAT FULL FAITH AND CREDIT *Shall* BE GIVEN IN EACH STATE TO THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS OF EVERY OTHER STATE, AND UNDER THIS CONSTITUTIONAL PROVISION THE SUPREME COURT OF SOUTH CAROLINA WAS REQUIRED TO GIVE TO THE STATUTES OF NEW YORK AND THE ARTICLES OF ASSOCIATION AND BY-LAWS OF THE EASTERN BUILDING AND LOAN ASSOCIATION MADE IN PURSUANCE OF THOSE STATUTES AND PROVEN AS FACTS CONSTITUTING AN INTEGRAL PART OF A NEW YORK CONTRACT, THE SAME FAITH, CREDIT AND EFFECT GIVEN TO THEM BY THE COURTS OF NEW YORK IN CONSTRUING LIKE CONTRACTS.

Const. U. S. Art. IV., § 1.
Cooley's Principles of Const. Law (2d ed.), 203.

The origin of this constitutional clause is clear, the reason for its existence manifest, and the history of its adoption brief and explicit.

It has long been a settled doctrine of private international law in England and all common law jurisdictions, that the laws of one country forming an integral part of a contract entered into and performable in such country, are to be treated as a part of the contract when it comes before the tribunals of another country for enforcement, and, when properly proven, given the same meaning and effect, the same faith and credit, that would be given them by the tribunals of the place of the contract.

Warrender *v.* Warrender, 9 Bligh., 115;
2 Cl. & F., 529, per Lord Brougham.
Bank of Augusta *v.* Earle, 13 Pet., 519.

Story: Conflict of Laws (8th ed.), pp. 36, 37, note (*a*).
Minor's Conflict of Laws, p. 5, § 4.
Robinson *v.* Queen, 87 Tenn., 445; 11 S. W. Rep., 38, 39.
Forepaugh *v.* Del., &c., R. Co., 128 Pa. St., 217; 5 L. R. A., 508, and note.
Fonseca *v.* Cunard S. Co., 153 Mass., 553.
Hilton *v.* Guyot, 159 U. S., 113.

"The first question to be considered is, what are the rules by which an English court ought to be governed in construing a foreign contract? Where a written contract is made in a foreign country, and in a foreign language, the Court, in order to interpret it, must first obtain a translation of the instrument; secondly, an explanation of the terms of art (if it contains any); thirdly, evidence of any foreign law applicable to the case; *and fourthly, evidence of any peculiar rules of construction*, if any such rules exist, by the foreign law. With this assistance the Court must interpret the contract itself on ordinary principles of construction."

Lord Cranworth in Di Sora *v.* Phillipps and others, 10 H. of L., 624, 633.

"It may be laid down as the settled doctrine of public law that personal contracts are to have the same validity, interpretation and obligatory force in every other country which they have in the country where they were made."

2 Kent's Com., *458.
Cooper *v.* Waldegrave, 2 Beav., 282.
Thornton *v.* Dean, 19 So. Car., 583, 589.
Smith *v.* Elliott, 39 Tex., 202, 211.
Liverpool Steam Co. *v.* Phœnix Ins. Co., 129 U. S., 397, 448.

It will scarcely be denied that such was the doctrine of the English law at the time of the

American Revolution and when the "Articles of Confederation," and, subsequently, the "Constitution of the United States," were framed.

Robinson *v.* Bland, 1 W. Bl., 234, 256, 258.

Lloyd *v.* Guibert, 6 B. & S., 100.

Peninsular, etc., Co. *v.* Shand, 3 Moore, P. C. C. (N. S.), 272; 11 Jur. (N. S.), 771; 13 W. R., 1049; 12 L. T. (N. S.), 808.

Ellis *v.* McHenry, 23 L. T. (N. S.), 862; 6 L. R. C. P., 228; 40 L. J. C. P., 109; 19 W. R., 503.

Don *v.* Lippman, 5 C. & F., 1.

Huber *v.* Steiner, 2 Scott, 304; 2 Bing. N. C., 202; 1 Hodges, 206.

Ferguson *v.* Fyffe, 8 C. & F., 121.

In order to secure this faith and credit to foreign laws, it was only necessary in the courts of England to prove such laws as matters of fact, and by evidence to establish the construction and effect of such laws at the *situs* of the contract of which they formed a part.

Mostyn *v.* Fabrigas, Cowp., 174;

Crawford *v.* Witten, Lofft., 154; 1 Dougl., 4 *n.*

Male *v.* Roberts, 3 Esp., 163 (Eldon).

Nelson *v.* Bridport, 8 Beav., 527; 10 Jur., 871.

After such proof of a foreign law and its interpretation was made, the English courts held themselves bound by it, and it was not a question of fact for a jury but of law for the court as to the meaning and effect of the foreign law in the place of contract and of its enactment.

Copin *v.* Adamson, 9 L. R. Exch., 345; 31 L. T. (N. S.), 242; 43 L. J. Exch., 161; 22 W. R., 658.

Such being the rule of private international law between different independent nations when the American colonies came to form themselves first into a confederation of states and later into "a more perfect union," in which many of their rights of sovereignty and independence were merged, it was but natural that they should first recognize and then extend and establish as a part of their fundamental law that rule which previously had been a matter of international comity.

Hence we find in the Articles of Confederation that part of the rule relating to the records, acts and judicial proceedings of the different States, and the faith and credit to be accorded them in the other States was thus expressed: "Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State."

Articles of Confederation, Art. 4, § 3.

Manifestly this clause in the Articles of Confederation required full faith and credit to be given in all States (*a*) to the public records of each State, (*b*) to the public statutes or acts of each State, and (*c*) to the judgments and judicial proceedings of each State. However, like nearly all other provisions of the Articles of Confederation, it stopped short of the full accomplishment of its apparent purpose by not providing *a rule of evidence* which would be operative in and binding upon all the States of the confederation, sufficiently *authenticating* State records, acts and judicial proceedings. Hence when the Constitution of the United States was framed the clause in question was enlarged and extended so as to read as follows: "Full faith and credit *shall* be given in each State to the *public acts*, records and judicial proceedings of every other State. And the congress *may* by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof."

Const. U. S., Art. IV., § 1.

In the language of Judge Cooley:

"By this provision a rule of comity becomes a rule of constitutional obligation. It also becomes a uniform rule, and the common authority is empowered to pass laws whereby the courts may govern their action in receiving or rejecting the evidences presented to them of the public acts, records and judicial proceedings of other States. Nor is this of more importance to the States as such than to those whose individual interests may be involved or affected; and, indeed, the interests involved are usually private and individual rather than public.

"The full faith and credit to which the public acts, records and proceedings are entitled in other States is the same faith and credit to which they are entitled in the State whose acts, records and judicial proceedings they are."

Cooley's Principles of Const. Law (2d Ed.), p. 203.

And such is the meaning of the clause as construed by the late Chief Justice Waite and his associate Justices when he presided over the deliberations of the Supreme Court.

"Without doubt the constitutional requirement of Article IV., § 1, that 'full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State,' implies that the public acts of every State *shall be given the same effect by the courts of another State that they have by law and usage at home.* * * * Whenever it becomes necessary, under this requirement of the Constitution, for a court of one State, in order to give faith and credit to a public act of another State, to ascertain what effect it has in that State, *the law of that State must be proved as a fact.*"

Chicago & Alton R. R. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 623.

It has been suggested (*a*) that the term "Public Acts" as used in the constitutional provision does

not mean legislative acts or statutes, and it has also been suggested (*b*) that § 905 of the Revised Statutes of the United States not having provided the *effect* to be given in each State to the public acts of other States, no federal question arises out of a failure to give to such public acts full faith and credit—that is, to give them the same effect that would be given them in the State of their enactment. It has also been suggested (*c*) that as the statutes of a State have no extra-territorial effect, a failure of the courts of one State to apply a statute of another State to a contract under consideration in such courts and which was made and to be performed in the State enacting the statute in question, and under and in accordance with such statute, involves no federal question. In short, it has been denied that effect must be given by the courts of one State to the statute of another State entering into and forming an integral part of a contract made and performable in the State where the statute was enacted, and that the same effect must be given to the statute as a part of the contract that would be given to it in the State of its enactment.

To these several questions, in their order of statement, we now address ourselves.

THE TERM "PUBLIC ACTS"—ITS MEANING: *The term "public acts" in Article IV., § 1 of the Constitution of the United States refers to the legislative enactments or public statutes of the several States.*

At the time of the adoption of the Constitution of the United States, the term "public acts" had a well settled meaning. It always referred to public statutes as distinguished from private statutes. "A general or public act is a universal rule that regards the whole community."

1 Blackstone's Commentaries, *p. 86.

On May 17, 1787, in the constitutional convention Mr. Randolph offered a form of a proposed Government in which the word "acts" was used.

"6th. Resolved, that each branch (of the legislative body) ought to possess the right of originating *acts*."

Eliot's Debates (2d Ed.), V. 5, pp. 126, 127 (Madison's Papers).

Again: "The 6th resolution (of May 17, see above) stating the cases in which the national Legislature ought to legislate was next taken into discussion. On the question whether each branch should originate *laws* there was a unanimous affirmative without debate."

Eliot's Debates, V. 5, p. 139 (Madison's Papers).

So Article VI. of Pinckney's proposed constitution in the last paragraph has

"All *acts* made by the Legislature of the United States, pursuant to this Constitution, and all treaties * * * shall be the supreme law of the land, and all Judges shall be bound to consider them as such in their decisions."

Eliot's Debates (2d Ed.), V. 5, p. 131 (Madison's Papers).

In June, 1787, during the debates in the constitutional convention Mr. Pinckney moved:

"That the national legislature should have authority to negative all *laws* which they should judge to be improper." He argued that such a universality of the power was indispensably necessary to render it effectual; that if the States were left *to act* of themselves in any case, it would be impossible to defend the national prerogative, however extensive they might be on paper; that the *Acts* of Congress had been defeated by this means.

Mr. Madison seconded the motion and said:

"He could not but regard an indefinite power to negative legislative *acts* of the States as absolutely necessary to a perfect system * * *. The States

would, of themselves, pass no operative *act* any more than one branch of a legislature. * * *.

"Mr. Gerry could not see the extent of such power and was against every power that was not necessary. He thought a remonstrance against unreasonable *acts* of the States would restrain them."

Eliot's Debates, V. 5, pp. 170, 171, 172.

Again: Mr. Patterson, among others, moved the following proposition:

"5. Resolved, that a Federal judiciary be established * * * to have authority to hear and determine, in all cases which may arise, any construction of any treaty or treaties, or which may arise on any of the *acts* for the regulation of trade * * *.

"6. Resolved, that all *acts* of the United States in Congress, made by virtue and in pursuance of the powers hereby * * * [conferred] shall be the supreme law of the respective States so far as those *acts* or treaties shall relate to said States * * *."

Eliot's Debates, V. 5, p. 192.

That the term "public acts" means legislative acts or public statutes is clearly shown by the form in which Art. IV., § 1 of the Constitution was first reported to the Constitutional Convention of 1787. The clause then read "full faith and credit shall be given in each State as to the *acts of the Legislature*," &c. This was subsequently shortened as a mere matter of style to the words "public acts," meaning, beyond doubt, acts of the Legislature, or statutes.

That the term "public acts," in Article IV., § 1 of the Constitution of the United States, has the meaning here contended for is, we think, clear upon both reason and authority.

Unity *v.* Burrage, 103 U. S., 447, 454.

"The words '*act* of the Congress' are as strong and unequivocal as *statute* of the Congress."

Story, *J.*, in United States *v.* Smith, 2 Mason, 143, 151.

"Acts are general or special, public or private. All legislative acts are laws, and if not laws then they are not acts of legislation."

People *v.* Tiphaine (N. Y.), 3 Parker's Cr. Rep., 244; s. c., 13 Howard's Prac. (N. Y.), 76, 77.

So much for the meaning of the term "public acts." Let us now consider the next contention stated above.

CONGRESSIONAL ACTION WAS NOT REQUIRED OR NECESSARY TO MAKE OPERATIVE THE CONSTITUTIONAL PROVISION THAT "FULL FAITH AND CREDIT *shall* BE GIVEN IN EACH STATE TO THE PUBLIC ACTS * * * OF EVERY OTHER STATE."

Article IV., § 1, of the Constitution of the United States originated in the Committee of Detail in the Constitutional Convention, and in its original form was reported by that committee as follows: "Full faith shall be given in each State *to the acts of the Legislatures* and to the records and judicial proceedings of the courts and magistrates of every other State."

"The Growth of the Constitution," Meigs, p. 254.
2 Madison's Papers, 1240.

When the clause thus reported by the committee of detail came before the Federal Convention for action, Mr. Randolph moved the following proposition: "Whenever the act of any State, whether legislative, executive, or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other

States as full proof of the existence of that act; and its operation shall be binding in every other State in all cases to which it may relate and which are within the cognizance and jurisdiction of the State wherein said act was done."

3 Madison's Papers, 1449.

At the same time Mr. Governeur Morris moved the following proposition on the same subject: "Full faith *ought* to be given in each State to the public acts, records and judicial proceedings of every other State, and the Legislature shall by general laws determine the proof and effect of such acts, records and proceedings."

These proposed forms of the clause in question, together with Article XVI. of the report of the committee of detail, were then referred to a committee consisting of Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Wilson and Mr. Johnson.

3 Madison's Papers, 1449.

This committee reported the clause back to the Federal Convention as Article XVI. in the following form: "Full faith and credit *ought* to be given in each State to the public acts, records and judicial proceedings of every other State; and the Legislature shall, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect which judgments obtained in one State shall have in another."

It is manifest that at this time the committee intended to provide expressly, *first*, how such public acts, records and judicial proceedings should be proven, and *second*, the effect which judgments obtained in one State should have in another, and that they did not then contemplate making an absolute requirement upon the courts of one State to give to the public statutes of another State the same meaning and effect that such statutes would have in the State of their enactment. This is shown by the fact that in the draft of the clause as reported

the word "*ought*" is used instead of the word "*shall*" in the clause as it was finally adopted.

3 Madison's Papers, 1479.

The clause came up for consideration again in the convention of September 3, 1787, and a debate then occurred as to whether the meaning and effect of the provision should be limited by certain suggested changes *so as to restrain its meaning and effect to judgments and judicial proceedings.*

3 Madison's Papers, 1480, 1481.

"Thereupon, on motion of Mr. Madison, the words '*ought to*' were struck out and '*shall*' inserted; and 'shall' between 'Legislature' and 'by general laws' struck out and 'may' inserted *nem con.*"

3 Madison's Papers, 1841.

Thereafter the "committee on style" reported the clause in question as it now stands in the Federal Constitution.

"The Growth of the Constitution," Meigs, 256.

Manifestly, the purpose of the framers of the Constitution was to require full faith and credit to be given to the public statutes of each State when pleaded and proven in the courts of a sister State in any case where rights had been established under such statutes, either by way of contract or otherwise, in the State passing the statute in question; and going a step further, the Constitutional Convention, after changing the term "ought" to the term "shall" so as to make the requirement of full faith and credit peremptory so far as the public statutes of sister States are concerned, authorized Congress to determine, first, how such public acts, records and judicial proceedings shall be authenticated, and, second, what effect shall be given in the courts of

one State to the judgments and judicial proceedings of another State.

Congress is without power to change the meaning or qualify the effect of the first paragraph of Article IV., § 1, of the Constitution, and, consequently, has never attempted to do so.

"The clause of the Constitution propounds three distinct objects: First, to declare that full faith and credit shall be given the records, &c., of every other State; secondly, to prescribe the manner of authenticating them; and, thirdly, to prescribe their effect when so authenticated. The first is declared and established by the Constitution itself and is to receive no aid, nor is it susceptible of any qualification by Congress. The other two are expressly subjected to the legislative power."

2 Story on the Constitution (5th Ed.), § 1308.

Section 905 of the Revised Statutes of the United States establishes the effect to be given to the judgments of sister States, and provides for the authentication and proof of those public acts to which Article IV., § 1, of the Constitution as adopted requires that full faith and credit *shall* be given.

It surely must have been the intent of Congress to give effect to the constitutional provision in question, as applied both to judgments and to public acts, by providing as to the effect of the judgments and as to the manner of authenticating and proving the acts. The acts of a sister State being thus authenticated and proven, it follows from the explicit language of the Constitution itself that full faith and credit must be given to such acts, and the term "full faith and credit" cannot reasonably be interpreted as having any other meaning than that in the construction of a contract or a corporate charter of which a statute of the State of the contract or corporate *situs* is an integral part, such statute, when properly pleaded and proven, must be given the same force and effect by the Court

considering the contract and the statute, that would have been given to such statute in the courts of the State where the contract was made and to be performed and the statute enacted.

" 'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.' The language is positive and declaratory, leaving nothing to future legislation."

2 Story on the Constitution (5th Ed.), § 1309.

Whether in any case this doctrine should be extended, it is not necessary for us to discuss at this time or for this Court to determine now, but to deny the application of the constitutional provision for the purpose here indicated, is to make it possible for the courts of any State to practically nullify corporate membership contracts entered into in another State and valid under the public acts of such State, even though such contracts be made and performable in the State enacting such statutes, and be themselves regulative of the status of the corporation and its members.

" I apprehend that it is now established by the law of this country that one who becomes a shareholder in a foreign company, and therefore and thereby a member of that company, such company existing in a foreign country and subject in all things to the law of that country, himself becomes subject to the law of that country, and to the articles or constitutions of that company construed and interpreted according to the law of that country in all things and as to all matters and all questions existing or arising in relation to or connected with the acts and affairs and the rights and liabilities of such company and its members severally and collectively."

Kelly, *C. B.*, in Copin *v.* Adamson, L. R., Exch., 345, 349.

We do not deny that Congress *might* legislate as to the effect to be given to the statutes of one State when proven in another State, and by such legislation it is possible that for some purposes *extra-territorial* effect might be given to such statutes.

But Congress could not by any enactment constitutionally prevent State statutes from being given "full faith and credit" in other States. It might add to the constitutional provisions, but it cannot abridge the constitutional right. It might define the term "full faith and credit," but not having done so the common law meaning of the term prevails, and that meaning is that the same effect must be given to the statute of a sister State regulating the contract of membership of a corporate shareholder in a corporation of such sister State that the courts of the sister State have given to the statute.

Copin *v.* Adamson; Copin *v.* Strachan, 9 L. R. Exch., 345.

Canada So. R. Co. *v.* Gebhard, 109 U. S., 527.

Fish *v.* Smith, 73 Conn., 377.

Washington Central Bk. *v.* Hume, 128 U. S., 195, 207.

Coghlan *v.* So. Car. R'd. Co., 142 U. S., 101, 109.

Wayman *v.* Southard, 10 Wh., 1, 43.

It is not permissible for a State court to nullify a contract of corporate membership in another State by the avowal that comity does not require it to give effect to a statute of the sister State that forms a part of the very contract itself.

It is just here that the rule of "comity" has been superseded and that "the rule of constitutional obligation" becomes operative.

Huntington *v.* Attrill, 146 U. S., 657, 666, 684, 685, 686.

Whitman *v.* Oxford Nat. Bk., 176 U. S., 559, 564, 565.

McCullough *v.* Virginia, 172 U. S., 102, 116, 117.
Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 366, 391.

It must be conceded by opposing counsel that even in the State of South Carolina the rule of "comity" has always been that the "full faith and credit" to be given to the statute of a foreign jurisdiction forming a part of a contract, and properly proven as such, is to apply such statute in accordance with its terms and its settled construction in the jurisdiction of its enactment.

Fitzsimmons *v.* Guanahani Co., 16 So. Car., 195.
Thornton *v.* Dean, 19 So. Car., 583, 589.
Pegram *v.* Williams, 4 Rich. (So. Car.), L., 219.
Belcher *v.* Commissioners, 2 McCord (So. Car.), 23.
McCandlish v. Cruger, 2 Bay (So. Car.), 377.
Touro *v.* Cassin, 1 Nott. & McC. (So. Car.), 173.

"The principle is that the *lex loci contractus* is to be observed in deciding on the nature, validity and construction of the contract."

Levy *v.* Boas, 2 Bailey (So. Car.), 219.
Ayres *v.* Audubon, 2 Hill (So. Car.), 601.

"It has been repeatedly held by this Court and the United States Supreme Court that every contract made embodies the law governing such contract as much as if so stipulated in the contract in express terms."

Adler *v.* Cloud, 42 So. Car., 272, 291.

Therefore the statutes of New York as given in evidence in this case and their application by the

Courts of New York as proven in this case, were a part of the contract between the Eastern Building & Loan Association and its stockholder, Ebaugh, and as such must be given "full faith and credit" by the Courts of South Carolina, not as a matter of comity and favor, but as a matter of constitutional right invoked and insisted upon.

Chicago, etc., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615.

Same Case, first appeal, 108 U. S., 18 22.

And the right of the parties to contract under and subject to the laws of New York, neither the Legislature nor the Courts of South Carolina can abridge or deny.

R. S. U. S., § 1977.

Yick Wo. *v.* Hopkins, 118 U. S., 356, 369.

Santa Clara Co. *v.* Southern Pac. R. Co., 118 U. S., 394, 396.

On the other hand the Courts of South Carolina cannot refuse to enforce the contract according to the laws of New York without violating the Fourteenth Amendment by destroying the liberty of contract and denying to plaintiff in error the "equal protection of the laws."

Allgeyer *v.* Louisiana, 165 U. S., 578.

Holden *v.* Hardy, 169 U. S., 366, 391.

This brings us to the third contention already stated, namely, that we are seeking to give extra-territorial effect to the laws of New York and that this the Courts of South Carolina are not required to do.

We concede that State statutes have no extra-territorial effect.

THE QUESTION IS NOT ONE OF THE EXTRA-TERRITORIAL EFFECT OF A STATE STATUTE IN ANOTHER

STATE. IT IS WHETHER A COURT OF ONE STATE CONSTRUING A CONTRACT OF CORPORATE MEMBERSHIP MADE AND PERFORMABLE IN ANOTHER STATE CAN REFUSE TO GIVE TO A STATUTE OF THE STATE OF THE CONTRACT THE SAME MEANING AND EFFECT, AS A PART OF THE CONTRACT OF MEMBERSHIP, THAT WOULD BE GIVEN TO IT IN THE STATE OF THE CORPORATE *situs*.

We insist that in the case at bar the statutes of New York and the Articles of Association and By-Laws of the Eastern Building and Loan Association enter into and form an inseparable part of the contract of corporate membership and that full faith and credit can only be given to the laws of New York by giving to them the same effect in connection with the contract of membership that has been given them by the courts of New York.

Glenn *v.* Garth, 147 U. S., 360.
Canada So. R. Co. *v.* Gebhard, 109 U. S., 527, 537.
Chase *v.* Curtis, 113 U. S., 452, 458.
Whitman *v.* Oxford Nat. Bk., 176 U. S., 559, 564, 565.
Carpenter *v.* Strange, 141 U. S., 87, 103.

"Whenever a court of one State is required to ascertain what effect a public act of another State has in that State, the law of such other State must be proved as a fact."

Lloyd *v.* Matthews, 155 U. S., 222, 227.

And when so proven, as in the case at bar, then not only the validity, but the construction and effect of the law must be determined by the State court in accordance with the Constitution and judicial decisions of the State by whose Legislature it was enacted.

Lloyd *v.* Matthews, 155 U. S., 222, 227.
Chicago, etc., R. Co. *v.* Wiggin's Ferry Co., 119 U. S., 615.

In no other way can full faith and credit be given *to the "public acts" and "judicial proceedings" of* "another State," as required by § 1 of Art. IV. of the Federal Constitution.

We submit that any decisions, or any *dicta*, in any opinion, of this Court not in harmony with these views cannot be sustained as against the foregoing line of reasoning based upon the history of the constitutional provision in question and the plain meaning of that provision in the light of the prior common law.

We have in the case at bar proven the "public acts" and "judicial proceedings" of the State of New York in strict conformity with § 905 of the Revised Statutes.

We have thereby complied with the rule laid down in the *Wiggins Ferry* cases and in *Lloyd* v. *Matthews*.

We have invoked the "full faith and credit" clause of the Federal Constitution in the State Courts and been told, in substance, that the laws of New York, even though they form a part of a contract made and performable in New York, will not be treated as a part of the contract by the courts of South Carolina. This is not a "construction" of these laws, but a denial of their validity as parts of the contract and a refusal to give them *any* effect and, therefore, this Court has jurisdiction to review this case upon its merits.

May it not well be queried in this connection whether a State may, through judicial proceedings, take possession of the assets of a solvent foreign corporation in its limits by suit and judgment against the corporation, and distribute such assets or their proceeds among the stockholders of the foreign corporation resident in such State, in such a manner as to give to such resident stockholders more than their paid in or *pro rata* share of the corporate capital stock, thereby discriminating against the corporate stockholders in other States having

equal rights and interests in the corporation and its *capital stock and assets?*

Compare:

Blake *v.* McClung, 172 U. S., 239, 247.
Blake *v.* McClung, 176 U. S., 59 63, 65, 68.

The Judiciary Act of 1789 provided that:

"The laws of the several states, except where the Constitution, treaties or statutes of the United States otherwise provide, shall be regarded as rules of decision in trials at common law, in courts of the United States, in cases where they apply."

R. S. U. S., §721.

It will be noticed nothing is said as to the effect of such laws or the faith and credit to be given them. It is merely provided that they shall be "rules of decision," a far less definite term than the constitutional language which is that "full faith and credit *shall* be given in each State to the public acts * * * and judicial proceedings of every other State."

But this Court has uniformly held that as "rules of decision" State statutes establishing rules of property can be given full faith and credit only by giving them the same construction, interpretation and effect which they have in the State of their enactment.

Walker *v.* State Harbor Comrs., 17 Wall., 648, 651.
Randall *v.* Brigham, 7 Wall., 523.
Allen *v.* Massey, 17 Wall., 351.
Ohio *v.* Frank, 103 U. S., 697.
Green *v.* Neal's Lessee, 6 Pet., 291, 299.
Bucher *v.* Cheshire R. Co., 125 U. S., 582.
Hartford Ins. Co. *v.* Chicago, &c., R. Co., 175 U. S., 100.

Carrying the analogy a step farther, this Court has held in many cases that the construction of a

State statute by the Courts of the State of its enactment forms a part of the statute and will be followed, no federal question being involved, even though this Court does not agree with such construction.

Forsyth *v.* Hammond, 166 U. S., 518.
Board *v.* Louisiana, 179 U. S., 622.
Jaffray *v.* McGehee, 107 U. S., 361, 365.
Brashear *v.* West, 7 Pet., 608.
May *v.* Tenney, 148 U. S., 60, 64.
Louisiana *v.* Pilsbury, 105 U. S., 278, 294.
South Branch Lumber Co. *v.* Ott, 142 U. S., 622, 628.

And this principle is so rigidly observed that where the same statute has been enacted in different States and the Courts of such States differ in their construction of it, this Court will follow the different constructions in cases coming from the different States, even though the statute thus becomes "a different law in one State from what it is in the other."

Union Bank of Chicago *v.* Kansas City Bk., 136 U. S., 223, 235.

And so this Court will change its construction in obedience to later decisions of a State court of last resort changing the construction of a statute of such State, when no vested rights or contract obligations will be affected thereby.

Leffingwell *v.* Warren, 2 Bl., 599.
Wade *v.* Travis Co., 174 U. S. 499, 508.
Bauserman *v.* Blunt, 147 U. S., 647.
Moores *v.* Bank, 104 U. S., 625.

So the construction as to the powers of a corporation placed by the highest Court of a State upon a State statute chartering it is conclusive in this Court.

Smith *v.* Kernochen, 7 How., 198.

And in like manner the construction by the State courts of a clause regulating the liability of stockholders in a State statute authorizing the formation of corporations will be followed by this Court.

Flash *v.* Conn., 109 U. S., 371.

"It is also settled that the laws which subsist at the time and place of the making of a contract and where it is to be performed, *enter into and form a part of it*, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its *validity*, CONSTRUCTION, DISCHARGE and enforcement."

Mr. Justice Swayne in Von Hoffman *v.* City of Quincy, 4 Wall., 535, 550.

These doctrines of this Court all rest upon the principle for which we contend, namely, that in order to give full faith and credit to a statute of one jurisdiction when it comes before the courts of another jurisdiction, it must be given the same effect that it has by law or judicial interpretation in the State of its enactment; and as the Constitution says full faith and credit *shall* be given in each State to the public acts and judicial proceedings of every other State, this can only be done in a case where a contract made and to be performed under the laws of a sister State is involved, by treating those laws as a part of the contract and giving them the same force and validity as a part of such contract that they would have at the *situs* of the contract. Nothing short of this is "full faith and credit," and congressional action to determine what full faith and credit means would be a work of supererogation.

We now pass to a discussion of the other federal questions that were expressly raised in this case in the court below, or which arise by necessary implication on the face of the record.

II.

THE JUDGMENT OF THE SUPREME COURT OF SOUTH CAROLINA DENIES TO PLAINTIFF IN ERROR THE "EQUAL PROTECTION OF THE LAWS" AND DEPRIVES IT OF THE LIBERTY OF CONTRACT GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES AND THE FOURTEENTH AMENDMENT THERETO.

What constitutes "the equal protection of the laws" and liberty of contract is not defined in the Fourteenth Amendment itself, but must be determined by reference to the general law of the land.

U. S. *v.* Wong Kim Ark, 169 U. S., 696.

The amendment seems to crystalize into the Constitution certain fundamental principles of Magna Charta and our own Declaration of Independence.

Brannon: "The Fourteenth Amendment," 315-320.

Wally's Heirs *v.* Kennedy, 2 Yerg (Tenn.), 554.

That the "equal protection of the laws" clause applies to corporations is now settled law, and hence we need only discuss here the question whether the judgment of the Supreme Court of South Carolina in the case at bar denies to plaintiff in error "the equal protection of the laws" within the rational meaning of the amendment itself.

Smith *v.* Ames, 169 U. S., 466.

The record in this case shows that defendant in error, a citizen of South Carolina, made application in writing for membership and stock in the plaintiff in error; that such application was made in accordance with the by-laws of the corporation, in the State of New York at the corporate *situs;* that defendant in error expressly agreed to assume all the

burdens and obligations of a stockholder and observe and be bound by the corporate articles and by-laws and the laws of the State of New York regulating the Eastern Building and Loan Association and like corporations of New York.

Transcript, pp. 10, 11, 12.

The application for shares and the stock certificate on which Ebaugh relies as obligating the corporation to pay him the par value of his shares at the expiration of seventy-eight months, even though the stock has not attained its par or maturity value, are in direct conflict with his claims, and show that the corporate Articles of Association and by-laws enter into and form a part of the contract of membership which cannot be disregarded.

Transcript, pp. 10, 11.

The application contains this clause: "I hereby agree to abide by all the terms, conditions and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said Association."

Transcript, p. 10.

The stock certificate recites that the by-laws of the corporation "are hereby referred to and made a part of this contract."

Transcript, p. 10.

The certificate then provides that all payments to the stockholder upon the certificate "are payable at home office of the Association at Syracuse, N. Y., within sixty days after the acceptance and approval of satisfactory proofs."

Transcript, p. 11.

The conditions stated in the stock certificate and subject to which it is issued are set out in full in the

record. Those that seem to be material here are as follows:

"This certificate of shares is issued to and accepted by the holder thereof upon the following express terms and conditions:

"FIRST.—The shareholder agrees to pay or cause to be paid, a monthly instalment of seventy-five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month *until such share matures or is withdrawn.* * * *

"FOURTH.—Any members in good standing may withdraw their monthly instalments at any time by first giving thirty days' notice, and will receive six per cent. annual interest on all shares of six months' standing, and up to two years; the third year seven per cent.; and any time after the third year, and before maturity, eight per cent.

"FIFTH.—If a shareholder dies, his personal representative may withdraw his shares at any time, or continue on to maturity.

"SIXTH.—At stated periods, the profits arising from interest, premiums, fines and other sources, shall be apportioned among the shares in good standing.

"SEVENTH.—All payments must be paid to an authorized agent, or sent to the secretary at the home office by draft, express, or money order, or registered letter. Individual drafts or checks not receivable. * * *

"NINTH.—The by-laws of this association, which are attached to and endorsed hereon, are a part of this contract, and such by-laws and this certificate are to be construed together as part of the contract between the association and the shareholder."

Transcript, pp. 11, 12.

It will be noted that the "ninth" condition above quoted makes the by-laws a part of the contract with the shareholder.

Transcript, p. 11.

The by-laws thus made a part of the contract of membership were given in evidence, and appear in full in the record.

Transcript, pp. 54–62.

Section 1 of Article XI. of the by-laws divides the funds of the Association into two classes known as loan and expense funds respectively, and provides that a part of the capital payments or "dues" paid in by stockholders shall be set apart and used for expenses.

Transcript, p. 57.

The necessary consequent of this is that members cannot, upon withdrawal or at any time before the maturity of their shares, receive back the full amount of their contributions to the capital stock, unless the *net* profits of the corporation have been sufficient to pay all expenses and provide for all contingencies.

The obligation of the stockholder to continue paying "dues" until his stock becomes fully paid is made clear by a by-law provision, which gives the corporation a lien upon the stock itself to secure such payments.

Transcript, p. 60,
By-Laws, Art. XIV., § 13.

And the amount to be paid *monthly until the stock is "fully paid,"* is expressly fixed at seventy-five cents per share.

Transcript, p. 60,
By-Laws, Art. XIV., § 14.

Stockholders whose stock has been fully paid or become matured to its par value by payments

thereon plus profits earned can, of course, receive the par or maturity value of such stock.

Transcript, p. 52,
Articles of Incorporation, Art. XV.
Transcript, p. 61,
By-Laws, Art. XIV., § 21.

When stock has not been fully paid and the profits have not been sufficient to mature it the holder is only entitled to withdraw *the amount paid into the "loan fund,"* plus certain profits according to the length of time the stock has been in force.

Transcript, pp. 60, 61,
By-Laws, Art. XIV., §§ 18, 19.

But "in no case shall a withdrawal from the loan fund exceed the amount of the instalments paid thereto, together with the estimated amount of *the earnings* upon the same," and the amount paid as interest or profits to withdrawing stockholders "shall not exceed the *net* earnings of said stock."

Transcript, p. 51,
Articles of Incorporation, Art. XII.

Finally, in order to fix the *status* of members and their rights of payment and withdrawal beyond cavil it is provided not only that payments to such members will only be made at the home office in New York, but also that:

"Any action brought against this Association shall be commenced within six months after filing proofs, *and in the County of Onondaga and State of New York.*"

Transcript, p. 12,
Stock certificate, condition "Fourteenth."

On this state of facts and under these Articles of Incorporation and by-laws defendant in error for a period of seventy-eight months paid to plaintiff in error the sum of seventy-five cents per month

on each of his shares of stock. This amounted in the aggregate to but $58.50 paid in by him upon each share of stock, or a total payment upon his ten shares of but $585. There had been some profits earned by the Association at the expiration of the seventy-eight months' period, and it appears that the book value of the stock at that time (*i. e.*, the amount paid in upon it plus profits) was $600.40.

Transcript, p. 46, *68.

At the expiration of the seventy-eight months' period and after some correspondence between plaintiff in error and defendant in error, defendant in error Ebaugh on October 19, 1898, filed his certificate of stock for withdrawal, first endorsing the same as follows:

"The within mentioned shares of stock in the Eastern Building and Loan Association of Syracuse, New York, are hereby withdrawn; and I have this day received the sum of $———— in full of the amount.

"Dated at Greenville, S. C., October 15, 1898.

"D. W. EBAUGH, [SEAL.]"

Transcript, pp. 44, *64, Ev. of N. C. Visscher; Tr., pp. 44–47, correspondence.

In view of the fact that Ebaugh's stock was not fully paid and had not attained its par or maturity value, and that its book value was but $600.40, the Association was compelled to refuse payment of the par value of the ten shares as demanded by Ebaugh, but offered and stood ready to pay their withdrawal value under the laws of New York. And thereupon, taking advantage of the fact that plaintiff in error was within the jurisdiction of South Carolina, being authorized to do business in that State and having an agent there, Ebaugh, in January, 1899, began the

action which is now before this Court upon the writ of error in this case.

Transcript, pp. 2–4, "Complaint."
Transcript, pp. 4–9, "Answer."

As we have already seen, the plaintiff in error as defendant below gave in evidence and duly proved the Articles of Incorporation and by-laws of the corporation; the application for stock and the stock certificate of defendant in error; the "Public Acts" of New York under which plaintiff in error was incorporated and the "judicial proceedings" of the courts of New York adjudging the *status* of members in corporations organized under said laws in cases like the one at bar.

Ante, *pp.* 4 and 5.
Transcript, pp. 10–12, 31–35, 35–38, 38–41, 42, 47–54, 54–62.

On this state of the record we insist that the decision and judgment of the Supreme Court of South Carolina denied to plaintiff in error "the equal protection of the laws" within the true meaning and intent of the Fourteenth Amendment.

Allegeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 336, 391.

The refusal of the Supreme Court of South Carolina to enforce the corporate articles and to recognize the validity of the statutes of New York forming an integral part of the contract of membership between the defendant in error and plaintiff in error, was in and of itself a denial of "the equal protection of the laws" to plaintiff in error, and a discrimination in favor of defendant in error because of his citizenship in South Carolina that violates the principles of the Fourteenth Amendment.

Brannon, "The Fourteenth Amendment," 97, 98.
Barbier *v.* Connolly, 113 U. S., 27.

Blake *v.* McClung, 172 U. S., 239, 247.
Blake *v.* McClung, 176 U. S., 59, 63, 65, 68.
Sully *v.* Am. Nat, Bk., 178 U. S., 289, 303.
Belfast Sav. Bk. *v.* Stowe, 92 Fed. Rep., 102, 103, 104.

Ebaugh by reason of his contract of membership acquired vested contract rights which cannot be impaired and may be enforced by him under the laws of New York.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227, 240.

Therefore the association had corresponding rights as against him, and the State of South Carolina cannot, by a judicial decision, discriminate in his favor, and at the same time deny validity to the laws of New York forming a part of the contract itself. This violates alike the "full faith and credit" clause of the Federal Constitution and the "equal protection of the laws" clause of the Fourteenth Amendment.

Sully *v.* Am. Nat. Bk., 178 U. S., 289, 303.

The several decisions we have already cited from the South Carolina reports show that the established rule in that State has been that contracts are to be enforced in South Carolina in accordance with the statutes and decisions of the jurisdiction where the contract was made and is to be performed.

Ante, p. 34.

Yet, in the case at bar, as in the Welling and Bonnoitt case, the Supreme Court of South Carolina refuse to apply this established rule upon the express ground that it might result in injury to one of the citizens of South Carolina as between himself and a corporation of New York. This is equivalent to an

express denial of the "equal protection of the laws" as between the stockholders of plaintiff in error resident in South Carolina and those resident in New York and other States, and as the corporation in this case represents all its stockholders, it seems clear that there has not only been a denial of the "equal protection of the laws" but likewise an absence "of due process of law."

"Carhart as a non-resident unsecured creditor * * * has the right to share in the distribution of the assets of the Carnegie Land Company upon the same level as like creditors of the company who are residents of the State of Tennessee, and as the decree below denies him that right, it must be reversed as to him for that reason."

Sully *v.* Am. National Bank, 178 U. S., 289, 303.

Certainly this principle fits the case at bar, because the effect of the judgment of the Supreme Court of South Carolina is to take the corporate funds belonging in equal ratio to all stockholders of the plaintiff in error and by "robbing Peter," who happens to live in New York or Virginia, "to pay Paul" merely because the latter lives in South Carolina. Surely such a doctrine as this cannot be countenanced by this Court.

III.

NOT ONLY DOES THE JUDGMENT OF THE SUPREME COURT OF SOUTH CAROLINA DENY FULL FAITH AND CREDIT TO THE LAWS OF NEW YORK AND DENY TO PLAINTIFF IN ERROR THE EQUAL PROTECTION OF THE LAWS, BUT IT ALSO IMPAIRS THE OBLIGATION OF A CONTRACT AND DENIES TO PLAINTIFF IN ERROR ANY REMEDY IN THE COURTS OF SOUTH CAROLINA UPON A

CONTRACT VALID UNDER THE LAWS OF NEW YORK, IN WHICH STATE THE CONTRACT WAS MADE AND IS TO BE PERFORMED. IN THUS DENYING THE CONTRACT RIGHTS OF THE CORPORATION IN THE COURTS OF SOUTH CAROLINA AS AGAINST THE CITIZENS OF THAT STATE, IT DEPRIVES PLAINTIFF IN ERROR OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

We concede the rule to be that the obligation of a contract is not "impaired" within the meaning of § 10 of Art. I. of the Constitution by mere judicial legislation which under the guise of "construction" not only impairs but actually destroys the obligation of a contract.

New Orleans Water Works Co. *v.* Louisiana Sugar Co., 125 U. S., 18, 30.

Knox *v.* Exchange Bank, 12 Wall., 379, 383.

But we insist that this doctrine that only *State statutes* impairing the obligation of contracts are obnoxious to the constitutional provision has been limited and qualified by those commanding authorities which secure justice by declaring that when a contract has been entered into under a given state of judicial decisions construing a State statute or Constitution, no *subsequent* judicial oscillation can impair its obligation.

Gelpcke *v.* Dubuque, 1 Wall., 206.

Township of Pine Grove *v.* Talcott, 19 Wall., 677.

Olcott *v.* Supervisors, 16 Wall., 690.

Douglass *v.* County of Pike, 101 U. S., 677.

Burgess *v.* Seligman, 107 U. S., 20, 33.

Pleasant Township *v.* Ætna Life Ins. Co., 138 U. S., 67, 73.

It is but a step, and a step which we think should now be taken, from this doctrine to the enunciation

of the principle that when a contract of which a State statute is a necessary element and an integral part, is entered into in a State which is the place of contract and performance both, that the courts of another State cannot change the settled construction of such statute as fixed by the decisions of the State of its enactment, and by a totally new and variant construction not only impair the obligation of the contract, but destroy the contract and refuse to give effect to the statute as a part of the contract, determining its obligation.

See: Bedford *v.* Eastern Building & Loan Assn., 181 U. S., 227, 241.

"The obligation of a contract is the law which binds the parties to perform their agreement."

Von Hoffman *v.* the City of Quincy, 4 Wall., 552.

Bedford *v.* Association, *supra.*

McCraken *v.* Hayward, 2 How., 608, 612.

This obligation of the contract in the case at bar is found in the New York statutes, the corporate charter and the corporate by-laws as applied by the courts of New York. These and these alone constitute "the law which binds the parties to perform their agreement." "The law, then, which has this binding obligation, must govern and control the contract, in every shape in which it is intended to bear upon it, whether it affects its validity, construction or discharge."

Ogden *v.* Saunders, 12 Wh., 257.

"The obligation of a contract made within a sovereign State, must be precisely that allowed by the law of the State and none other."

Ogden *v.* Saunders, 12 Wh., 320.

"I conclude that, so far as relates to private contracts between individual and individual, it is the civil obligation of contracts—*that obligation which is recognized by, and results from the law of the*

State in which the contract is made, which is within the meaning of the Constitution."

Ogden *v.* Saunders, 12 Wh., 321, 822.

"It follows that the States have, since the adoption of the Constitution, the authority to prescribe and declare by their laws, respectively, *what shall be the obligation of all contracts made within them.*"

Ogden *v.* Saunders, 12 Wh., 322.

The State of New York, by its statutes—its "Public Acts"—by the grant of its charter of incorporation and the by-laws made in pursuance thereof, and by its judicial decisions applying its statutes and fixing their meaning, declared and settled "the obligation" of the contract of membership of Ebaugh in the Eastern Building and Loan Association, at the time that contract of membership was made. Does it not follow that no other State can—either by statute or judicial legislation—impair the obligation of that contract, and that the judgment of the Supreme Court of South Carolina in the case at bar not only impairs the obligation of the contract, but does so by denying the validity of the laws of New York, refusing full faith and credit to the Public Acts and judicial proceedings of that State and destroying the liberty of contract itself.

Allgeyer *v.* Louisiana, 165 U. S., 590, 591.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227.

Holden *v.* Hardy, 169 U. S., 390, 391.

At the time that Ebaugh, a citizen of South Carolina, became a member of the New York corporation, assuming the burdens and acquiring the rights of membership in accordance with the laws of New York (*Canada Southern R. Co.* v. *Gebhard*, 109 U. S., 527; *Bedford v. Eastern B. & L. Assn.*, 181 U. S., 227) the settled law of South Carolina, estab-

lished by repeated decisions of its Supreme Court, was: "That every contract made embodies the law governing such contract as much as if so stipulated in the contract in express terms," and "that personal contracts are to have the same validity, interpretation and obligatory force in" South Carolina "which they have in the country where they were made."

Adler *v.* Cloud, 42 So. Car., 272, 291.
Cooper *v.* Waldegrave, 2 Beav. (So. Car.), 282.
Thornton *v.* Dean, 19 So. Car., 583, 589.
Fitzsimmons *v.* Guanahani Co., 16 So. Car., 195.
And see South Carolina cases cited *ante*, pp. 21 and 34.

Such was the South Carolina law when Ebaugh acquired his membership in the Eastern Building and Loan Association, but by its decision in this case and its prior decision in the case of *Welling and Bonnoitt*, the Supreme Court of South Carolina has abandoned this universal rule of the general common law and substituted for it the monstrous doctrine that it is not bound either by comity or constitutional obligation to enforce Ebaugh's contract of membership in accordance with the laws of New York.

Welling and Bonnoitt *v.* Eastern B. & L. Assn., 56 So. Car., 280, 296, 297.

We submit that in accepting Ebaugh, a citizen of South Carolina, as a member and a stockholder, the Eastern Building and Loan Association had a right to rely upon the law of South Carolina with reference to contracts made and to be performed in another State, as that law regulating the construction of contracts dependent upon the statutes of other States then stood, and that the change of judicial decision as to the statutes of other States, as evidenced by the *Welling and Bonnoitt* case and the case at bar, does impair the obligation of a con-

tract within the true meaning and intent of the constitutional provision.

Olcott *v.* The Supervisors, 16 Wall., 678.

Loeb *v.* Columbia Township Trustees, 179 U. S., 472, 492, 493.

We are aware that the doctrines here contended for in relation to the impairment of the obligation of contracts are apparently in conflict with late and leading cases.

Central Land Co. *v.* Laidley, 159 U. S., 103.

Bacon *v.* Texas, 163 U. S., 216.

These cases do not involve a change of State decisions affecting vested rights under a contract made and to be performed in another State, and of which a statute of the State of the contract, together with the decisions of such State construing it formed a necessary and inseparable part. In the case at bar the Supreme Court of the State of South Carolina has decided that the statutes of New York, the New York judicial decisions and the certificate of incorporation and by-laws of the plaintiff in error are not a contract binding upon the defendant in error. This Court is not bound by a State Court decision holding that not a contract which has been alleged to be so in accordance with the forms of law and for the protection of the obligation of which the Federal Constitution has been invoked.

Jefferson Branch Bank *v.* Skelly, 1 Bl., 436, 443.

McCullough *v.* Virginia, 172 U. S., 102, 109.

In such cases, assuming that the constitutional provision has been properly invoked, this Court will determine the meaning and effect of the contract in accordance with the laws of the contract *situs*.

Sioux City R. Co. *v.* North American Trust Co., 173 U. S., 99, 100.

It should not be overlooked that this litigation was not instituted in the jurisdiction of the corporate *situs*, as it should have been (Clark *v.* Mutual Reserve Fund Life Assn. (D. C.), 43 L. R. A., 390, 397; Taylor *v.* Mutual Reserve Fund Life Assn. (Va.), 45 L. R. A., 149; Leary *v.* Columbia River, &c., Co., 82 Fed. Rep., 775; Sidway *v.* Missouri Land, &c., Co., 101 Fed. Rep., 481; Republican Mountain Silver Mines *v.* Brown, 58 Fed. Rep., 644). It was begun in South Carolina by defendant in error *seeking affimative relief*, and prosecuted to judgment there upon the principle that the courts of South Carolina were not bound to enforce contracts made and performable in New York, in accordance with New York laws, but could enforce the New York law so far as it was advantageous to defendant in error, and deny the application of plain, unequivocal, statutory provisions of New York when adverse to his interests. This may be "due process of law," but if so it is neither justice nor honesty, nor does it accord to plaintiff in error the "equal protection" of the law which the XIVth amendment guarantees.

The contention of defendant in error is in effect that this contract with the plaintiff in error is not embodied in the stock certificate, articles of incorporation and by-laws, taken together, but is limited to the provisions of the stock certificate, and that there is in fact no such contract as that claimed by plaintiff in error; and the courts of South Carolina, by ignoring the provisions of the New York statutes and the articles of association and by-laws and the decisions of the New York courts, virtually sustain this contention.

"We have often had occasion to say that this Court, when reviewing the final judgment of a State Court upholding a State enactment alleged to be in violation of the contract clause of the Constitution, possesses paramount authority to determine for itself the existence or the non-exisience of the con-

tract set up, and whether its obligation has been impaired by the State enactment."

Chicago, &c., R. *v.* Nebraska, 170 U. S., 57, 68.

Von Hoffman *v.* Quincy, 4 Wall, 535, 550.

If this Court thus protects a contract against State legislation under the contract clause of the Federal Constitution, will it not protect a contract against the decision of a State Court which refuses full faith and credit to the laws of a sister State and abrogates a contract upon the pretense of construing it? Repudiation and confiscation are not "construction" and "interpretation."

See Western Mass., &c., Ins. Co. *v.* Hilton, 42 App. Div. (N. Y.), 52, 58, 59.

Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 108 U. S., 18, 22.

Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615.

The decision of the Supreme Court of South Carolina in the case at bar denies to plaintiff in error all remedies upon its contract with defendant in error as a stockholder and refuses to hold him to his obligations as such. No State can so deny the enforcement within its jurisdiction of valid contracts under the law of a sister State.

Edwards *v.* Kearzey, 96 U. S., 595, 600, 601.

The Homestead Cases, 22 Gratt. (Va.), 266; s. c., 12 Am. Rep., 507, 514, 515.

White *v.* Hart, 13 Wall., 646, 654.

Cæsar *v.* Cappell, 83 Fed. Rep., 403.

Eastern Building & Loan Assn. *v.* Bedford, 88 Fed. Rep., 7.

Allgeyer *v.* Louisiana, 165 U. S., 578.

This Court held in the Bedford case that while conditions upon which foreign corporations may do business in any State are a matter of State regulation, yet under this power a State cannot discharge citizens of such State from their contract obligations made and performable in another State. Can a State by a Supreme Court decision do what it would not be permitted to accomplish by legislative action?

Bedford *v.* Eastern Building & Loan Assn., 181 U. S., 228.

It also seems that the decision of the Supreme Court of South Carolina deprives plaintiff in error of its liberty to contract and of its property without "due process of law."

The effect of the decision is to require plaintiff in error, in violation of the statutes of New York and the provisions of its charter and by-laws, to pay defendant in error a sum of money for each share of stock held by him, largely in excess of payments made by him upon the stock, plus his *pro rata* share of the profits of the corporation (*ante*, pp. 45 and 46). This certainly deprives the corporation of its property and interferes with its liberty of contract. But does it do so without "due process of law"?

"This Court has never attempted to define with precision the words 'due process of law.'"

Holden *v.* Hardy, 169 U. S., 366, 389.

But the constitutional restriction undoubtedly applies to the *judicial* as well as to the executive and legislative powers of a State.

Murray's Lessees *v.* Hoboken Land Co., 18 How., 272, 276.

Hence, we submit that a State court cannot by *judicial legislation* abrogate a contract valid in another State, entered into under the laws of that State and performable in such other State, without

violating that clause of the XIVth amendment to the Constitution of the United States, which provides that no State "shall * * * deprive any person of life, liberty or property without due process of law."

Holden *v.* Hardy, 169 U. S., 366, 390, 391.
Allgeyer *v.* Louisiana, 165 U. S., 578.

"For 'upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them'; and 'if they fail therein, and withhold or deny rights, privileges or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this court for final and conclusive determination.'"

In re Wood, 140 U. S., 278, 286.
Robb *v.* Connolly, 111 U. S., 624, 637.
Neal *v.* Delaware, 103 U. S., 370, 386, 387.

It would certainly be anomalous to hold that a contract made and to be performed in New York and valid under the laws of New York could be impaired as to its obligation by the Supreme Court of South Carolina, at the suit of a party resident in that State, in violation of the plain terms of the contract and of the laws of New York, without the denial of full faith and credit to the laws of New York. Yet such is the effect of the contention of counsel for defendant in error in this case.

IV.

WE SUBMIT THAT THE MAKING OF THE CONTRACT OF MEMBERSHIP BETWEEN THE EASTERN BUILDING AND LOAN ASSOCIATION, A CORPORATION OF NEW YORK, AND EBAUGH, THE DEFENDANT IN ERROR, A CITIZEN AND RESIDENT OF SOUTH CAROLINA, WAS A COMMERCIAL TRANSACTION, AND BY REASON OF THE MANNER IN WHICH THE CONTRACT OF MEMBERSHIP WAS ENTERED INTO AND THE LAWS UNDER WHICH IT WAS MADE, IT MUST BE TREATED AS A TRANSACTION IN THE NATURE OF INTERSTATE COMMERCE, AND THEREFORE A FEDERAL QUESTION EXISTS WHICH THIS COURT HAS JURISDICTION TO DETERMINE.

We do not consider that the question here raised is in any way concluded by those cases holding that contracts of insurance are not commerce, being mere contracts of indemnity against loss.

Paul *v.* Virginia, 8 Wall., 168, 183.
Liverpool Ins. Co. *v.* Mass., 10 Wall., 566, 573.
Hooper *v.* California, 155 U. S., 648, 653, 654.
New York Life Ins. Co. *v.* Cravens, 178 U. S., 389.

Neither is the case of *Nathan* v. *Louisiana*, in which it was held that a broker engaged in the sale and transfer of foreign bills of exchange, was not engaged in the transaction of interstate commerce, and, therefore, not exempted from a State law imposing a tax on exchange and money brokers, an authority against the contention which we now make.

Nathan *v.* Louisiana, 8 How., 73, 80.

In that case it was conceded that "money is * * * an instrument of commerce, and so is a

bill of exchange," and the law is now well settled that a State tax upon an instrument of interstate commerce is unconstitutional.

Western Union Tel. Co. *v.* Pennsylvania, 128 U. S., 39.

Ratterman *v.* Western Union Tel. Co., 127 U. S., 411, 423.

LeLoup *v.* Port of Mobile, 127 U. S., 640.

From this it necessarily follows that a State law prohibiting a foreign corporation from doing business in such State, if construed as preventing a citizen of the State from assuming a promissory obligation payable to such foreign corporation in the State of its corporate *situs* would be a regulation of an instrument of interstate commerce, and therefore within the inhibition of the Federal Constitution.

Hamilton's Works (Lodge's Ed.), Vol. 3, pp. 179, 203.

Prentice on "The Commerce Clause," 47, 48.

Osborn *v.* U. S Bank, 9 Wh., 738, 859, 867.

Likewise a law preventing a foreign corporation from accepting a promissory obligation payable at the corporate domicile and transmitting in exchange therefor, either in currency or by draft, money advanced to the maker of the obligation, would be an unconstitutional interference with interstate commerce.

Welton *v.* Missouri, 91 U. S., 275, 277.

It is left unsettled, so far as the decisions of this Court are concerned, whether the sending of a note from one State to another, to be discounted in the latter State, is interstate commerce.

Bamberger *v.* Schoolfield, 160 U. S., 149, 167.

The determination of what is commerce between the States rests upon the general commercial usages of the country and the construction of the commerce clause of the Federal Constitution by this Court.

Schollenberger *v.* Pennsylvania, 171 U. S., 1.
Bowman *v.* Railway Co., 125 U. S., 465, 501.

It is not an essential of interstate commerce that there shall be a transportation of goods or merchandise between the States. "Interstate commerce consists of intercourse and traffic between the citizens and inhabitants of different States and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities."

Addyston Pipe & Steel Co. *v.* United States, 175 U. S., 211, 241.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196, 203.
Kidd *v.* Pearson, 128 U. S., 1, 20.
County of Mobile *v.* Kimball, 102 U. S., 691, 702.

Certainly the transaction in the case at bar was both "intercourse" and "traffic" between citizens and inhabitants of different States.

FIRST.—Defendant in error, Ebaugh, subscribed for part of the capital stock of the plaintiff in error, agreeing to pay for such stock in monthly installments called "dues," and to continue such payments until the stock should attain its par value, and by such subscription for stock in the plaintiff in error, defendant in error acquired, as a stockholder, an undivided interest in the corporate properties at the

corporate *situs*, subject to his promissory obligation to pay for that interest in full.

Murfree on Foreign Corp., § 381.
Bank of Augusta *v.* Earle, 13 Pet., 519.
Plimpton *v.* Bigelow, 93 N. Y., 592.
Moore *v.* Gennett, 2 Tenn. Ch., 375.
Youngs *v.* South Tredegar I. Co., 85 Tenn., 189; 4 Am. St. Rep., 752.

He also acquired a right to participate in the profits of the corporation.

Endlich on Building Associations (2d Ed.), § 469.
Plimpton *v.* Bigelow, 93 N. Y., 592, 599.
Burrall *v.* Bushwick R. Co., 75 N. Y., 211, 216.
People *ex rel.*, Wiebush, &c., Co. *v.* Roberts, 154 N. Y., 101, 107.

Such profits were applicable, in building and loan association parlance, to the purpose of "maturing" his stock, that is, carrying the stock to its face or par value in advance of the time when Ebaugh's mere payment of "dues" upon the stock would mature it.

"When the payments to the Association, together with the distributive profits, after the deduction of expenses, equal the face value of the stock, then the stock is matured; the certificates are then called in and the holder receives the face value thereof in cash, unless he is a borrower of the Association, and in that event his indebtedness is cancelled."

Thompson on Building and Loan Assns. (2d Ed.), § 4, p. 9; see also *Id.*, § 134, p. 258; § 190, p. 378.

SECOND.—Defendant in error, as a part of the privileges incident to his membership in the corporation, acquired not only an undivided interest in the

corporate properties at the corporate *situs*, but also a vested right, at his election, to call for an advance or loan to him of the par or maturity value of his shares.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227, 240.
Endlich on Building Associations (2d Ed.), §§ 20, 88.
7 Thompson on Corp., §§ 8724, 8726.

THIRD.—Defendant in error also acquired the privilege, in the nature of a vested right, of withdrawing his contributions to the capital stock of the plaintiff in error, subject only to the limitations placed on such withdrawal by the laws of New York and the corporate charter and by-laws.

Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

FOURTH.—The transaction between the defendant in error and the plaintiff in error was a purchase by the defendant in error of an undivided share or interest in the properties of the plaintiff in error, consummated through the medium of a subscription made in writing and transmitted through the United States mails, and the issue of a certificate of stock representing the interest acquired by the defendant in error in the plaintiff in error and its transmission and delivery, through the United States mails, to the defendant in error at the place of his citizenship and residence in the State of South Carolina.

Ante, pp. 17, 42, 43.
Transcript, pp. 10, 11 and 12.

For this stock certificate, itself an instrument of commerce, and representing a transferable interest in the capital stock of the plaintiff in error, the defendant in error made certain payments in money, which were transmitted by mail to the home office of the corporation in Syracuse, New York, and the contract of the defendant in error was that he

would continue to make such payments at the rate of seventy-five cents per month per share until the stock should attain its par value.

Ante, p. 43.
Transcript, pp. 11 and 12.

The stock certificate, by its terms, provides that "all payments under this certificate are payable at the home office of the association at Syracuse"; it also provides that the by-laws of the corporation, "which are attached to and endorsed hereon, are a part of this contract, and such by-laws and this certificate shall be construed together as part of the contract between the association and the shareholder."

Stock Certificate, Transcript, p. 11.

It seems to be settled law that a contract to subscribe for the stock of a foreign corporation is a contract to be performed at the corporate *situs*.

Penobscot, &c., R. R. Co. *v.* Bartlett,
12 Gray (Mass.), 244.

Hence we insist that the application and subscription for stock in the plaintiff in error and the transmission of the money for the first payments of dues or calls upon such stock, together with the issuance of the stock certificate and its transmission to the defendant in error at his residence in South Carolina, constituted a transaction that is necessarily interstate commerce, involving not only an exchange of the instruments of commerce as between the parties but an actual sale of certain property interests in the capital stock of the plaintiff in error to the defendant in error for a consideration payable in money. Is not such a transaction as this, between a corporation of New York and its stockholder in South Carolina, involving traffic in the corporate stock and a transfer of negotiable securities for money, when consummated in the manner that this transaction was, interstate com-

merce within the meaning of the Federal Constitution?

It is settled law that the business of transmitting telegraphic messages between the States is protected by the "commerce clause" of the Constitution, such messages being regarded as instruments of commerce and consequently not subject to State control.

LeLoup *v.* Port of Mobile, 127 U. S., 610, 645.
Telegraph Co. *v.* Texas, 105 U. S., 460.
Pensacola Telegraph Co. *v.* Western Union Telegraph Co., 96 U. S., 1.

It is equally well settled that no State can impose any conditions on the transaction of interstate commerce within such State.

Chy Lung *v.* Freeman, 92 U. S., 275.
New York *v.* Compagnie, etc., 107 U. S., 59.
Henderson *v.* The Mayor, 92 U. S., 259.
Brown *v.* Maryland, 12 Wh., 419.
Fritts *v.* Palmer, 132 U. S., 282.
Holder *v.* Aultman, 169 U. S., 81.

Nor can it, by any State action, executive, legislative or judicial, prevent a corporation of another State from transacting with its citizens business which of itself is commerce.

Cooper Mfg. Co. *v.* Ferguson, 113 U. S., 727, 736.
Crutcher *v.* Kentucky, 141 U. S., 47.
Steamship Co. *v.* Pennsylvania, 122 U. S., 326.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196.
Railroad Co. *v.* Husen, 95 U. S., 465–470.
Sherlock *v.* Alling, 93 U. S., 99, 103.

Assuming the transaction here in question to be a matter of interstate commerce, it must necessarily

involve a question arising under the Constitution and laws of the United States which will confer jurisdiction upon this Court to consider the case on its merits upon this writ of error to the Supreme Court of South Carolina.

W. U. Tel. Co. *v.* Call Pub. Co., 181 U. S., 92, 100, 101.

Columbia Water Power Co. *v.* Columbia Electric St. R., &c., Co., 177 U. S., 475.

In a recent case involving the construction of a statute of Pennsylvania, rendering void contracts of foreign corporations "doing business" in Pennsylvania without compliance with the statute, it was held by the Supreme Court of Pennsylvania, reversing the decision of the lower courts of that State, that the transactions by which a citizen of Pennsylvania became a member of and secured an advance from a New York Building and Loan Association was not the doing of business within that State, but was a transaction in the nature of interstate commerce, and the Supreme Court of Pennsylvania distinguishes a case holding that insurance contracts are not interstate commerce from the transaction by which a citizen of Pennsylvania becomes a member of a New York Building and Loan Association and secures an advance therefrom. Mr. Justice Potter, delivering the opinion of the Court upon this point said:

"Great reliance seems to have been placed upon the case of *Swing* v. *Munson* (191 Pa., 582), as sustaining the position of the appellee, but the question there was entirely different from that now under consideration. It did not involve the construction of the Act of 1874. The question was as to the right to solicit and take insurance within the State without complying with the stringent provisions of the Act of April 4, 1873. Insurance cases stand upon a basis of their own. The business of insur-

ance has been held not to be commerce, as an insurance policy has been defined merely as a contract of indemnity, and for this reason not protected as interstate commerce. The case of *Swing* v. *Munson* can therefore have no application to the question in hand."

People's B. L. & S. Assn. *vs.* Berlin, Supreme Court of Pennsylvania, Nov. 8th, 1901. Not yet reported.

There is no pretense in the case at bar that the plaintiff in error was "doing business" in the State of South Carolina in violation of any law of that State, and it must be clear that the transaction between the parties was not a matter of contract in the State of South Carolina, but on the contrary, that the contract was one made through the mails and to be performed exclusively in the State of New York.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227.

It would also seem that the purchase of stock in a corporation of another State, even though it is done through a soliciting agent in the State of the residence of the purchaser, is not doing business in that State within the contemplation of its laws, but is a transaction of commerce between the States.

Payson *v.* Withers, 5 Biss., 272; Opinion per Gresham, *J.*

"Doubts may at one time have existed upon the subject, but it is now well settled that a State law cannot discharge or suspend the obligation of a contract made in another State if it was legal where it was made and was a contract with a citizen of another State, not even if it was to be performed in the State whose law is invoked to defeat the remedy."

Clifford, Justice, in Green *v.* Collins, 3 Cliff., 494; s. c., Fed. Cas. No. 5755.

In the light of these principles and authorities, we respectfully invoke the opinion of this Court as to whether or not the transaction between the defendant in error, Ebaugh, and the plaintiff in error, Eastern Building and Loan Association, does not constitute commerce between the States within the meaning of the Federal Constitution, and if thereby jurisdiction is not conferred upon this Court to review the judgment of the Supreme Court of South Carolina in the case at bar.

V.

BUT IT IS CONTENDED IN THE BRIEF IN SUPPORT OF THE MOTION TO DISMISS THAT NO FEDERAL QUESTION ARISES IN THIS CASE BECAUSE THE SUPREME COURT OF SOUTH CAROLINA DID NOT REST ITS DECISION UPON THE *express* DENIAL OF "FULL FAITH AND CREDIT" TO THE LAWS OF NEW YORK AS IT DID IN THE *Welling* CASE (*ante*, pp. 2 and 3).

We meet this contention with the following propositions:

The judgment of the Supreme Court of South Carolina in favor of the defendant in error could not have been rendered if the contract obligations of defendant in error as a *stockholder* in the Eastern Building and Loan Association had been determined in accordance with the laws and judicial decisions of New York as they would have been in the courts of New York.

The test of compliance with the rule of constitutional obligation that full faith and credit shall be given in each State to the laws of every other State, is that the same effect shall be given to them that

would be given to them by the courts of such other State.

Chicago, &c., R. R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615.

There is no pretense in the opinion of the Supreme Court of South Carolina—or if there is, it is a *mere pretense*—that under the New York Act of 1851 and the articles of incorporation and by-laws of the Eastern Building and Loan Association, defendant in error was entitled to receive from the association the full par value of his stock before the actual maturity of the stock.

That Court accepts the pitiful evasion of the Referee and the Court below, that because the courts of New York have held in several cases that a corporation cannot avail itself of the plea of *ultra vires* as against a contract which has been performed in good faith by the other party, therefore a *stockholder* in a corporation is entitled to withdraw his contribution to the capital stock in direct violation of the corporate charter and the law under which the corporation was organized, merely because the *estimated* period of stock maturity has expired.

Transcript, pp. 64, 67.

This must rest upon the doctrine that a corporation of a purely mutual character can bind itself in violation of its charter powers by a guaranty that its stock shall have a certain value at a certain time, or earn a certain rate of dividends.

Yet nothing is better settled than that corporations cannot bind themselves by such guaranties and that dividends can be paid only from profits,

1 Morawetz on Corp. (2d Ed.), §§ 444, 457.

Mobile, etc., R. Co. *v.* Tennessee, 153 U. S., 486, 496.

New York, etc., R. Co. *v.* Nickals, 119 U. S., 296, 305, 306.

Elevator Co. *v.* Memphis, etc., R. Co., 85 Tenn., 703; s. c., 4 Am. St. Rep., 798.

2 Thompson on Corp., § 2152.

And this is particularly true of building and loan associations because of their strictly mutual character.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.

Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.

King *v.* International Bldg., etc., Union, 170 Ill., 135.

So the statute of New York, under which plaintiff in error is organized, expressly forbids the declaration or payment of any dividends to shareholders except from the earnings of the association.

"§ 7. The trustees of any association formed under the provisions of this act may, from time to time, declare dividends *from the earnings* of the association, payable in such manner as may be provided in the articles of association; *but no dividend shall be declared except from the earnings of the association.*"

Laws of N. Y., 1875, Ch. 564, § 1, amending Laws of N. Y., 1851, Ch. 122, § 7; Transcript, p.

This leaves nothing for "construction" or "interpretation" so far as the contract between plaintiff in error and defendant in error, as a stockholder, is concerned.

But the Supreme Court of South Carolina says: "Both the Master and Circuit Judge find as matter of fact that the laws of New York do not forbid the defendant from entering into an agreement by which the shares would mature in a definite time" (Transcript, p. 67), and the Court adds that such finding is conclusive. Yet there is not a "scintilla"

of evidence in the record upon which such a finding *as a finding of fact* can be based, all the *evidence* being directly and conclusively to the contrary.

Ante, p. 4 *et sq.*

And it is settled law that when statutes and judicial decisions of another State are given in evidence, the question of their effect and meaning is one of law, not of fact.

Thomson-Houston Co. *v.* Palmer, 52 Minn., 174; 38 Am. St. Rep., 536.
Kline *v.* Baker, 99 Mass., 255.

However, the Supreme Court of South Carolina confutes itself and confounds its own logic by citing three New York cases which were offered in evidence by the plaintiff below (defendant in error) as constituting "the only evidence" on this point. Those cases are: *Whitney Arms Co.* v. *Barlow*, 63 N. Y., 62; *DeGraff* v. *American Linen Thread Co.*, 21 N. Y., 124; *Diamond Match Co.* v. *Roeber*, 106 N. Y., 473.

We commend these cases to the careful examination of this Court. They are, by the South Carolina Court, supposed to *prove* that a stockholder in a mutual corporation can withdraw from the capital of the corporation more than he has contributed thereto, and more than his profits, and thereby force the corporation to guarantee the maturity of his stock and a fixed rate of interest upon it in violation of the express provisions of the New York law and of the corporate charter and by-laws!

The case of *DeGraff Linen Thread Company* was that of a sale by a corporation to an outside party dealing with the corporation at arm's length, and the corporation having received the *full consideration* was not permitted to rely upon its lack of authority. No question of an attempt to guarantee profits to a stockholder was involved, nor did the plaintiff there seek to recover from the corporation

something for which he had given *no consideration*, as in the case at bar.

Whitney Arms Co. v. *Barlow* is still less in point, as it merely lays down the rule that a corporation cannot avail itself of the defense of *ultra vires* when the contract has been in good faith fully performed by the other party. No question between stockholder and corporation was involved, none as to the right to guarantee the value of stock or its rate of earnings.

The case of *Diamond Watch Co.* v. *Roeber* is equally beside the mark, involving as it does a contract in restraint of trade and a branch of the doctrine of estoppel.

No question between stockholder and corporation exists in either of these three cases. How these three cases could prove as *matter of fact* what the Supreme Court of South Carolina says they do, is beyond ordinary comprehension.

On the other hand, the law of New York upon the question of the charter powers of plaintiff in error and the contract rights of defendant in error as a stockholder in the association was proven by undisputed evidence in direct conformity with the rule laid down by this Court in the *Wiggins Ferry* case.

> *Ante*, pp. 4, 5, 12, 13, 14, 15, 17.
> Chicago, &c., R. R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615.

The Supreme Court of South Carolina will not be permitted to ignore this undisputed proof upon the very point in issue and under the guise of "construing" a contract not only impair the obligation of the contract but deprive plaintiff in error of its property and refuse to give *any* faith or *any* credit to the express provisions of the statutes of New York and the plain, unequivocal decisions of the courts of New York applying and interpreting those statutes. It has been well said by one of the great Judges of this Court: "We shall never immolate truth, justice and

the law because a State tribunal has erected the altar and decreed the sacrifice."

Swayne, *J.*, in Gelpecke *v.* Dubuque, 1 Wall., 175, 206.

The entire contention of counsel for defendant in error in support of the motion to dismiss or affirm is really embodied in the following quotation from their brief:

"The statutes introduced in evidence by the defendant do not, in express terms, forbid building and loan associations from making such contracts as that made with Ebaugh. The conclusion that such contracts are forbidden by these statutes can be reached only by construction. Mere errors in the construction of the statute of another State furnishes no basis for a federal question."

Brief for Defendant in Error in support of Motion, p. 5.

Later on they insist that "reference to the proceedings in the State courts in the case at bar will conclusively show that the validity of the New York statutes was not denied, and that the error, if any, was in their construction."

Brief for Defendant in Error, p. 6.

They then quote the Referee's report in the trial Court to prove their contention.

Brief for Defendant in Error, pp. 6 and 7.

By the quotation made it appears that the learned Referee satisfied his conscience and "construed" the laws of New York by saying: "I do not see why such an association may not issue stock *to be fully paid up* (the italics are ours) by seventy-eight monthly payments and to be redeemed at par at the end of that time."

Brief for Defendant in Error, p. 7.

Neither do we see why seventy-eight monthly payments that *fully paid* up the stock would not mature it!

But that is not the question here, either as one of "construction" or otherwise.

The point is that seventy-eight monthly payments of *seventy-five cents per month* do not amount to one hundred dollars, but only to *fifty-eight dollars and fifty cents!* Hence the stock has not matured unless the "dividends" credited from profits are sufficient to mature it—that is to carry it to its par value—and in the case at bar the *undisputed* evidence was that the stock had not attained its maturity value.

Transcript, p. 16, evidence of D. W. Ebaugh.

Transcript, pp. 43, 44, 45, 46, evidence of N. C. Visscher.

That he had only made seventy-eight monthly payments of seventy-five cents each upon each share, defendant in error admits in the complaint filed by him as plaintiff below.

Transcript, pp. 2 and 3; Paragraphs V., VI. and VII.

The answer of the defendant corporation denied that the stock had matured.

Transcript, pp. 6-9, Paragraphs "Fifth," "Seventh," "Eighth" and "Twelfth."

Defendant in error, as plaintiff below, offered no evidence of the maturity of the stock, and the evidence for plaintiff in error, as defendant below, affirmatively proved that it had not matured.

Hence the "conclusion" of the Referee, as above quoted, is either beside the mark or a mere pretext upon which to deprive plaintiff in error of its property and to refuse to give full faith and credit to the laws of New York.

The laws of New York were not "construed," they were ignored.

The only question was whether the *undisputed* laws of New York and the plain provisions of the New York statutes should be held to govern the case, or whether it should be decided as it was in the Welling case, that: "*Whatever may be the laws of New York, we do not think they should be enforced in this State.*"

Ante, p. 7.

The decision of the Supreme Court of South Carolina was that the statutes and decisions of New York should not be given full faith and credit, but that *on the pretense of "construction" the "federal question" should be eliminated, if possible.*

That it has not been and cannot be so eliminated is manifest upon the face of the New York statutes, the plain meaning of which, even though there were not, as there are, half a score of New York cases so construing them, is that defendant in error cannot recover the par value of his stock until it has become matured,—that is, fully paid,—either by his payments of "dues" or "calls" at the rate of seventy-five cents per month, or by such payment plus a *pro rata* share of the profits, credited as dividends.

There was expert testimony as to the laws of New York and their construction by the Courts of New York upon this point, and that evidence was not rebutted or impeached in any way.

Transcript, p. 42, Evidence of D. A. Pierce.

Such evidence was corroborated by the giving in evidence of a case decided by the General Term of the Supreme Court of New York, and is conclusive.

O'Malley *v.* People's B. & L. Assn., 92 Hun (N. Y.), 572; Transcript, p. 38.

Chapter 122 of the Laws of New York of 1851 expressly provides that: "It shall be lawful for the

trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or installments as the articles of association shall prescribe."

Transcript, p. 32, paragraph 4.

The articles of incorporation of the association accordingly provide that: "The monthly dues per share shall be seventy-five cents."

Transcript, p. 50.

And the by-laws contain the following provisions on the same subject:

Sec. 13. Each share of stock shall be charged with any and all amounts that may be owing from the shareholder or his assigns to the association, whether as dues, loans, fines, interest or premiums, and all certificates of stock in said association shall, whether mentioned therein or not, be subject to a lien thereon, to secure any such indebtedness, and the right to deduct and withhold the amount of any such indebtedness is hereby expressly reserved to the association.

Sec. 14. *All shareholders shall pay, or cause to be paid, a monthly instalment of seventy-five cents on each share named in their certificate, until the same shall be fully paid;* said instalment to be paid to the association on or before the last Saturday of each month. Shareholders are required to pay monthly instalments without notice.

Transcript, p. 60, By-laws, Art. XIV., §§ 13 and 14.

There is no "construction" needed. The language is plain and unequivocal.

After his seventy-eight seventy-five cents per share monthly payments had been made defendant in error was notified by the association that his shares had not matured, and that he must either continue

his monthly payments until maturity or withdraw his stock at its withdrawal value.

Transcript, p. 46.

See also: Transcript, pp. 44, 45; Letter of C. A. Pooler, Secy., to D. W. Ebaugh.

Defendant in error refused to continue his payments or to accept the withdrawal value of the stock and brought his action in the State court to recover the par value of his stock, although such stock was only a little more than half paid in. Had his demand for payment in full been complied with the directors of the association would have been violating the express and unequivocal provisions of the two New York statutes under which the association was incorporated.

Laws of N. Y., 1851, Ch. 122, § 7, Transcript, p. 32; as amended,

Laws of N. Y., 1875, Ch. 564, § 1, Transcript, pp. 35 and 36.

Taking these several provisions of the statutes of New York and the articles of incorporation and by-laws of plaintiff in error into consideration, it will be seen that they repeatedly provide that a stockholder must pay his monthly payments until his stock reaches its par value, and that if he withdraws before maturity, he can only have the withdrawal and not the par value of the stock, and such withdrawal value is limited to "the amount of the monthly instalments that have been paid with such additional interest (dividends), if any, as the by-laws may provide, *except that the same shall not exceed the net earnings of the stock.*"

Transcript, p. 51, Articles of incorporation, ¶ XII.

The by-law provisions relating to withdrawals contain like limitations.

Transcript, p. 60, By-Laws, Art. XIV., §§ 18 and 19.

In the light of these statutory provisions and the terms of the articles of association and by-laws of plaintiff in error conforming to them, is it not manifest, that in requiring payment to defendant in error of the par value of his stock, the Supreme Court of South Carolina did not content itself with "construing" the contract and the laws of New York, but instead impaired the obligation of the contract, denied the plaintiff in error the equal protection of the laws, deprived it of its property, without due process of law, and necessarily and directly refused to give "full faith and credit" to the laws of New York?

VI.

THE EXISTENCE OF "A FEDERAL QUESTION" IN THIS CASE, HAS, WE THINK, BEEN DEMONSTRATED.

WE SUBMIT THAT THE FEDERAL QUESTIONS SO SHOWN BY THE RECORD WERE FULLY RAISED AND PRESENTED IN THE STATE COURT; THAT THE DECISION OF THE SUPREME COURT OF SOUTH CAROLINA WAS AGAINST THE CONSTITUTIONAL RIGHTS CLAIMED BY PLAINTIFF IN ERROR, AND THAT, THEREFORE, THIS CASE WAS PROPERLY BROUGHT TO THIS COURT BY WRIT OF ERROR.

"But the true and rational rule is, that the Court must be able to see clearly, from the whole record, that a certain provision of the Constitution or Act of Congress was relied on by the party who brings the writ of error, and that the right thus claimed by him is denied."

Bridge Proprietors *v.* Hoboken Co., 1 Wall., 116, 143.

"We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a Federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of § 709 of the Revised Statutes, as if it had been specifically referred to and the right directly refused."

Chapman *v.* Goodnow, 123 U. S., 540, 548.

Roby *v.* Colehour, 146 U. S., 153.

Dewey *v.* Des Moines, 173 U. S., 193, 199.

Keokuk, &c., Bridge Co. *v.* Illinois, 175 U. S., 626, 634.

It has already been pointed out that the "Federal questions" were specifically raised in the Court below; relied upon there, and by that Court decided adversely "by necessary intendment" to the claims of plaintiff in error.

And where the Federal question was necessarily raised and must have been decided adversely to the claim of plaintiff in error this Court will not dismiss the writ of error.

Eureka Lake, &c., Company *v.* Superior Court, 116 U. S., 410.

Des Moines, &c., Co. *v.* Iowa Homestead Co., 123 U. S., 552.

Green *v.* Van Buskirk, 5 Wall., 307.

This brings us to a discussion of the merits of this case in so far as the mutual rights and obligations of the parties are concerned, and in order to ascertain these we must first look into the nature of the Eastern Building and Loan Association, and then see what its contract relations with its members are under the laws of New York.

VII.

UNDER THE LAWS OF NEW YORK, PLAINTIFF IN ERROR IS A PURELY MUTUAL CORPORATION, WHOSE STOCKHOLDERS HAVE EQUAL, MUTUAL AND RECIPROCAL RIGHTS, DUTIES AND OBLIGATIONS, AND NO ONE OF WHOM CAN LEGALLY BE ACCORDED, IN THE STATE OF NEW YORK, ANY ADVANTAGE, PREFERENCE OR PRIORITY OVER ANOTHER.

Ch. 122, Laws of N. Y., 1851, Transcript, pp. 31–35.

Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

People *v.* Lowe, 117 N. Y., 175, 180.

Tindall, *C. J.*, in Silver *v.* Barnes, 6 Bing. N. C., 180; 8 Scott, 300; 37 Eng. Com. L., 335.

Robertson *v.* Homestead Assn., 10 Md., 397; s. c., 69 Am. Dec., 145.

Tilley *v.* Am. B. & L. Assn., 52 Fed. Rep., 618, 622.

Thompson on Building Associations (2d Ed.), §§ 3, 4.

"A mutual savings fund and loan association is purely a co-operative society, consisting of a partnership in the profits of money as a money maker, equitably distributed in proportion to the severalties of capital furnished by the individual members thereof."

Wrigley on Building Associations, p. 16.

VIII.

THE ARTICLES OF INCORPORATION AND BY-LAWS AND THE PROVISIONS OF CHAPTER 122 OF THE NEW YORK LAWS OF 1851, AND CHAPTER 564 OF THE NEW YORK LAWS OF 1875, ARE THE TEST OF THE RIGHTS AND OBLIGATIONS OF THE STOCKHOLDERS OF THE ASSOCIATION, AND BY THEM THE CONTRACT OF MEMBERSHIP MUST BE CONSTRUED, NOT ONLY IN NEW YORK BUT IN EVERY STATE OF THE UNION WHERE THE COURTS MAY BE CALLED UPON TO INTERPRET THE CONTRACT OF MEMBERSHIP.

Const. U. S., Art. IV., § 1.
Relfe *v.* Rundle, 103 U. S., 222, 225, 226.
Canada Southern Ry. *v.* Gebhard, 109 U. S., 527, 537.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.
Chase *v.* Curtis, 113 U. S., 452, 458.
Young *v.* Wempe, 46 Fed. Rep , 354.
Payson *v.* Withers, 5 Biss. (U. S.), 269, 278.
3 Thompson on Corp., § 3046.

And so it has been held by the courts of several States with reference to membership contracts between plaintiff in error and its stockholders.

Bennett *v.* Eastern B. & L. Assn., 177 Pa. St., 233; s. c., 55 Am. St. Rep., 723.
Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.
Campbell *v.* Eastern B. & L. Assn. (Va.), 37 S. E. Rep., 350; 98 Va., 729.
Eastern B. & L. Assn. *v.* Snyder (Va.), 37 S. E. Rep., 298; 98 Va., 710.

It is settled law that contracts must be construed by the law of the place of performance.

Coghlan *v.* South Carolina R. R. Co., 142 U. S., 101, 109, 110.

Pritchard *v.* Norton, 106 U. S., 124, 136.

Liverpool, etc., Co. *v.* Phœnix Ins. Co., 129 U. S., 397, 458.

Nor can it be denied that the place of performance of a contract of stock subscription with a corporation is at the corporate *situs*.

Penobscot, etc., R. Co. *v.* Bartlett, 12 Gray (Mass.), 244.

1 Thomp. on Corp., § 1259.

3 Thomp. on Corp., § 3046.

And in the case at bar this obligation is fixed by the terms of the stock certificate which constitutes the cause of action of the defendant in error, one of the express conditions embodied on the certificate being: "All payments under this certificate are payable at home office of the Association at Syracuse, N. Y., within sixty days after the acceptance and approval of satisfactory proofs."

Transcript, p. 11.

Another provision of the Certificate is that, "Any action brought against this association shall be commenced within six months after filing proofs, and in the County of Onondaga and State of New York."

Transcript, p. 12.

This provision has been held by the Supreme Court of Massachusetts to be valid and binding, and consequently a suit brought in the jurisdiction of Massachusetts by a stockholder of a New York building and loan association in whose charter the same clause appeared, was dismissed. In that

case the stockholder was remitted to his remedies in New York.

Daley *v.* People's B., L. & S. Assn. (Mass.), 59 N. E Rep., 452.

The by-laws also provide as follows: "All remittances for advance instalments, premiums, monthly instalments, fines and penalties, interest and premiums and all other payments shall be made to the Secretary of the Association at the Home office."

By-Laws, Art. XIV., § 16, Transcript, p. 60.

IX.

UNDER THE LAWS OF NEW YORK AND THE ARTICLES OF ASSOCIATION AND BY-LAWS OF PLAINTIFF IN ERROR DEFENDANT IN ERROR COULD NOT, IN THE STATE OF NEW YORK, MAINTAIN AN ACTION OR RECOVER UPON HIS CERTIFICATE THE PAR OR MATURITY VALUE THEREOF IN ADVANCE OF THE ACTUAL MATURITY OF THE STOCK.

O'Malley *v.* People's Assn., 92 Hun (N. Y.), 572.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.

Heslin *v.* Eastern B. & L. Assn., 28 Misc. (N. Y.), 376, 378; s. c., affd., 61 App. Div. (N. Y.), 458.

People *v.* Lowe, 117 N. Y., 175.

Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

See also the provisions of the Act of 1851 of N. Y. and the Articles of Incorporation and By-Laws of Plaintiff in error, which expressly so provide, *ante*, pp. 13–17.

Transcript, pp. 31–42.

Notwithstanding that such is the settled law of New York, the Supreme Court of South Carolina affirmed the decision of the Court below, giving the defendant in error judgment for the *full par value* of his stock, although it affirmatively appeared by *undisputed evidence* that the law of New York was as here stated, and that the stock had not matured.

Ante, pp. 45 and 46.

In connection with the doctrines already stated in this paragraph, we submit that a building and loan association cannot, by contract, fix the maturity period of its stock so as to *guarantee an estimated rate of profits or earnings*, and that this is settled law not only in New York but in every jurisdiction where the question has directly arisen.

King *v.* International Assn., 170 Ill., 135, 142.

Royal Trust Co. *v.* Culver, 87 Ill. App. Rep., 630.

Bertche *v.* Equitable Loan Assn., 147 Mo., 343.

Schell *v.* Equitable, &c., Assn., 150 Mo., 103.

Province *v.* Interstate B. & L. Assn. (Tenn.), 58 S. W. Rep., 265.

Heslin *v.* Eastern B. & L. Assn., 28 Misc., 376, 378; s. c. affirmed, 61 App. Div., 458.

Eastern B. & L. Assn. *v* Snyder (Va.), 37 S. E. Rep., 298; 98 Va., 710.

We have already seen that the contracts of such associations with their members must be construed in accordance with the laws and judicial decisions of the State of the corporate *situs* and the terms of the corporate charter.

Such is the general doctrine with relation to corporate contracts,

Washington Central Bank *v.* Hume, 128 U. S., 195, 206, 207.
Coghlan *v.* South Carolina R. R. Co., 142 U. S., 101, 109.

Nor can the contention of the defendant in error that he was induced to become a stockholder by representations that the stock would mature in seventy-eight months avail him as against this doctrine.

Upton *v.* Tribilcock, 91 U. S., 45, 50.

X.

THE CASES RELIED UPON BY COUNSEL FOR DEFENDANT IN ERROR ARE NOT IN POINT AND DO NOT ESTABLISH THEIR PROPOSITIONS: (*a*) THAT NO FEDERAL QUESTION IS INVOLVED, OR (*b*) THAT THE DECISION OF THE SUPREME COURT OF SOUTH CAROLINA ONLY INVOLVED THE "CONSTRUCTION" OF THE LAWS OF NEW YORK AND DID NOT DENY TO THEM "FULL FAITH AND CREDIT."

Briefly reviewing the principal cases cited by counsel for defendant in error, we find:

1. The case of *Glenn* v. *Garth* is not in point, because as MR. CHIEF JUSTICE FULLER, who delivered the opinion in that case and granted the writ of error in this one, well says: "*This record may be searched in vain for any proof that, as matter of fact, the public acts of Virginia had, by law or usage in Virginia, any other effect than was given them in New York.*"

Glenn *v.* Garth, 147 U. S., 360, 368.

In the case at bar the evidence to show this as a matter of fact is clear, uncontradicted and conclusive.

Ante, pp. 4 and 5.

2. In *Lloyd* v. *Matthews, the laws of Ohio were not proved as a fact* in the Kentucky court, and, therefore, the Court of Appeals of that State "was obliged to determine the case on the record, *and plaintiff in error had failed to plead the construction given the Ohio Statutes by the courts of Ohio, or to introduce the printed books of cases adjudged in the State of Ohio, or to prove the common law of that State by the parol evidence of persons learned in that law, or to put in evidence the laws of that State as printed under the authority thereof or a certified copy thereof.*" * * * "The Court of Appeals was left, therefore, to construe the parts of the Ohio laws that were pleaded as it would local laws; and it is settled that *under such circumstances*, where the validity of a State law is not drawn in question but merely its construction, no Federal question arises."

Lloyd *v.* Matthews, 155 U. S., 222, 227.

In the case at bar everything that this Court says was not done in the case just cited, to prove the State laws, was done, and proof having been made of the State statutes of New York and their construction by the courts of New York full faith and credit must be given to such statutes and to the New York decisions construing the same.

Hanley *v.* Donoghue, 116 U. S., 1, 3.

"It does not seem to have occurred to the Chief Justice (Taney) that the writ could be maintained upon the ground of a denial of full faith and credit to the Mississippi Statute by the construction given by the Louisiana Court."

Fuller, *C. J.*, in Glenn *v.* Garth, 147 U. S., 369.

3. The case of *Banholzer* v. *New York Life Ins. Company* rests upon the authority of Glenn *v.* Garth and Lloyd *v.* Matthews and clearly was not intended to go beyond the doctrine of those cases. "*The parties mutually agreed* that this should be a New York contract and construed according to the laws of that State. The decisions of the highest Court of that State as to the construction of such a contract and of the statutes of New York must therefore be accepted as conclusive upon the parties." So said the Supreme Court of Minnesota in that case (178 U. S., 406, 407). Later, in a second opinion the Minnesota court reviewed the contention that the case before it was "distinguishable" from the New York case which had been followed in the first opinion; *queried* whether the construction of the New York Statute by the New York court was binding *if the construction of the statute was not necessary to the decision* (Carroll *v.* Carroll, 16 How., 275, 286, 287), and then pretermitted the question so raised, saying: "We shall not decide that question, as we are satisfied that if the construction of the New York statute is to be considered *res integra* the notice required by it was not applicable," &c. (178 U. S., 408). On such a state of facts this Court granting, *arguendo*, that the Supreme Court of Minnesota had erred in its construction of the New York case and the New York statute, yet held, that as the validity of the statute was not denied and its meaning was first sought in a decision of the New York courts, the case fell within the doctrine of *Glenn* v. *Garth* and *Lloyd* v *Matthews, supra.*

Banholzer *v.* New York Life Ins. Co., 178 U. S., 408.

There is no analogy between the *Banholzer case* and the case at bar.

In this case the full faith and credit clause of the Federal Constitution was expressly invoked. It was insisted that under that clause the New York

statutes, and an authority and franchise exercised under them, must be given the same effect given them by the courts of New York. The decision of the Supreme Court of South Carolina, denies them that effect and relies upon the *Welling case* decided by the same Judge, in which it was held that: "Whatever may be the laws of New York, we do not think they should be enforced in this State" (*Ante*, p. 7). Relying upon this doctrine the Supreme Court of South Carolina, say in the case at bar: "We fail to discover any facts causing us to differentiate this case from those hereinbefore mentioned."

Transcript, pp. 67, 68.

It is for this Court to say, and it is its duty under the Constitution to determine, whether in this decision the Supreme Court of South Carolina gave to the laws of New York and the contract made under those laws the same effect that such laws and contract have in the courts of New York.

Green *v.* Van Buskirk, 5 Wall., 307, 311, 314.

Christmas *v.* Russell, 5 Wall., 290, 302.

Mills *v.* Duryee, 7 Cr., 481, 483, 484.

Carpenter *v.* Strange, 141 U. S., 87, 103.

Dupasseur *v.* Rochereau, 21 Wall., 130, 139.

Huntington *v.* Attrill, 146 U. S., 657, 666.

Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 624.

Chicago, &c., R. Co. *v.* Stevens, 174 U. S., 710.

"It was insisted on the one side, and denied on the other, that the faith and credit which the judicial proceedings in the courts of the State of Illinois had by law and usage in that State, were de-

nied to them by the Supreme Court of New York in the decision which was rendered.

"Whether this was so or not could only be properly considered when the case came to be heard on its merits; but this Court, in denial of the motion to dismiss, held that the Supreme Court of New York necessarily decided *what* effect the attachment proceedings in Illinois had by the law and usage in that State; and as it decided against the effect which Green claimed for them, this Court had jurisdiction under the clause of the Constitution which declares 'that full faith and credit shall be given in each State to the public acts, records and judicial proceedings in every other State,' and the Act of Congress of 1790, which gives to those proceedings the same faith and credit in other States that they have in the State in which they were rendered."

Green *v.* Van Buskirk, 7 Wall., 139, 145.

That the opinion of the Supreme Court of South Carolina in the case at bar denies the claims of the plaintiff in error under the laws of New York, and denies full faith and credit to those laws is manifest upon the face of the opinion.

Transcript, pp. 67 and 68.

That the opinion is itself a part of the record in the case, and, therefore, may be looked to as such is shown by the certificate of the Clerk of the Supreme Court of South Carolina, wherein it is recited: "I do further certify that the opinion rendered by the Court in said case is a part of the record of said case."

Transcript, p. 1.

Hence, this Court may look to the opinion of the Supreme Court of South Carolina, as it does to

opinions in cases coming up from the Supreme Court of Louisiana.

New Orleans Waterworks *v.* Louisiana Sugar Co., 135 U. S., 18, 27.
Eagan *v.* Hart, 165 U. S., 188, 189.
Murdock *v.* Memphis, 20 Wall., 590, 633.

And the federal question having been raised and decided adversely to the contention of plaintiff in error this Court has jurisdiction to determine this case upon its merits and the motion to dismiss or affirm should be denied.

We do not deem it necessary to further review the cases cited by counsel for defendant in error in the effort to show that the Supreme Court of South Carolina did not refuse to be bound by the decisions of the court of last resort of New York.

Brief for Defendant in Error, pp. 8 and 9.

We think it has already been demonstrated that the Supreme Court of South Carolina refused to give full faith and credit to the laws and judicial proceedings of the State of New York.

The plain language of the New York statutes needs no interpretation or construction. Those statutes were merely denied effect by the Supreme Court of South Carolina because that Court regarded itself as not bound "by comity" to give them effect. Thus the rule of constitutional obligation was ignored and the jurisdiction of this Court established.

What the New York law is we have already discussed sufficiently for the purposes of the motion to dismiss. Upon the merits that question will properly call for full consideration by this Court.

Green *v.* Van Buskirk, 5 Wall., 307; s. c., 7 Wall., 139.

Admittedly the *O'Malley case*, relied upon by plaintiff in error, was a direct authority insupport of the

contention of plaintiff in error as to the meaning and effect of the New York law.

Brief for Deft. in Error, p. 8.
Transcript, p. 38; s. c., 92 Hun (N. Y.), 572.

It makes no difference that the O'Malley case was not decided by the court of last resort; it was not appealed from and has recently been followed in New York by the decision of a court that in such a case, when the decision is unanimous, is a court of last resort.

House *v.* Eastern B. & L. Assn., 52 App. Div. (N. Y.), 163.
Code of Civil Procedure of N. Y. (1900), § 191.

That such decisions are entitled to full faith and credit in the courts of sister States is settled by the decisions of this Court.

Hollinger *v.* Davis, 146 U. S., 314, 319.

Besides, the decisions in the Court of Appeals of New York in the several cases which plaintiff in error gave in evidence upon the trial of the case below, construe the New York Acts of 1851 and 1875, and together with the articles of association and by-laws of plaintiff in error, are conclusive as to the construction and effect of the New York statutes in question in New York.

Concordia Assn. *v.* Read, 93 N. Y., 474.
People *v.* Lowe, 117 N. Y., 175.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.

The question as to what the common law of New York is apart from the statutes under consideration, does not arise in this case and hence we shall not follow counsel for defendant in error in their discussion on that subject.

Brief for Defendant in Error, pp. 10–12.

Having, as we believe, established the existence of several Federal questions, both expressly raised and necessarily appearing upon the face of the record in this case, we now ask that the motion to dismiss or affirm, heretofore filed, be denied, and that the judgment of the Supreme Court of South Carolina be in all things reversed.

Respectfully submitted,

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